

THE
A T T O R N E Y's
Pocket Companion;

Or, A GUIDE to the

PRACTISERS of the LAW;

In Two PARTS:

Being a Translation of Law Proceedings in the
Courts of **Kings-Bench** and **Common-Pleas.**

CONTAINING

A Collection of the Common FORMS, beginning
with the Original, and ending with the
Judicial PROCESS.

Together with an
Historical as well as Practical Treatise on EJECTMENT.

The Second EDITION carefully Corrected and
Revised by the AUTHOR.

To which is also added,
The Law and Practice of FINES and RECOVERIES,
and several other Presidents, with some Remarks on
the Forms of the *Habeas Corpora* and *Jurata* now in use.

PART II.

By a Gentleman of the *Inner-Temple.*

*Lex dudum pulchre sonuit Sermone Latino,
Horrida jam patrio claudicat ista pede,
Lingua Diserta Vale!* —————

In the SAVOY: Printed by E. and R. NUTT and
R. GOSLING, (Assigns of E. Sayer, Esq;) for R.
GOSLING at the Crown and Mitre over-against
Fetter-lane, Fleet-street. 1733.

ATTORNEY
 & SOLLICITOR



PRACTISERS OF THE LAW;
 In Two PARTS;

Being a Translation of Law Proceedings in the
 Courts of King's Bench and Common Pleas.

CONTAINING
 A Collection of the Common Law, together
 with the Original, and ending with the
 Judicial Process.

Together with an
 Historical as well as Practical Treatise of Ejectment.

The Second Edition carefully Corrected and
 Revised by the Author.

To which is added
 The Law and Practice of Fines and Recovery, and
 and several other Proceedings, with some Remarks on
 the History of the Ancient Custom and Justice now in use.

PART II.
 By a Gentleman of the Inner Temple.

Two Volumes bound in one, printed by
 Hurd and Neave, Stationers, London.

London Printed by R. and J. DODD, in the Strand, 1773.
 In the 2davo: Printed by R. and J. DODD, in the Strand, 1773.
 R. GOSLING, (Author of the former Edition) for R.
 GOSLING in the Strand and New-Exchange.

THE
ATTORNEY'S
POCKET COMPANION.

Of the Returns of Writs in the
Common Pleas.

BEFORE I proceed to the Form Common
and Manner of the Returns, Pleas.
I shall here shew the Reason
why I don't call the Return,
*In Octabis Sancti Hillarii, in eight Days of
Saint Hillary,* which is this; Because I
don't see any Reason that our Laws, or
the Practise of 'em, should in any one In-
stance, lie under the Imputation of an
Absurdity, when there is no Necessity for
the least Shadow of Absurdity to be
thrown upon 'em, unless you will think it
Necessary *errare cum patribus.*

B

If I

Common
Pleas.

If I had promised to pay a Man twenty Pounds in *three Weeks of Christmas*, I dare say he'd think I broke my Word with him, if I made him stay till *three Weeks after Christmas* before I paid him.

Therefore if there's no necessity to translate it thus, in order to make it a true Translation, I think I shall shew very good Authorities, both from the Classicks and the Law, to call *In Octabis Sancti Hillarii*, on the *Octave of Saint Hillary*, to justify this Translation.

In the first Place, the Word *Octaba* is Latin for the *Octave*, which Word signifies the ultimate Day of the *Octaves*, or *eight Days of a Feast* continued for so long Time, including the festival Day, and this Feast so continued was of Popish Institution, as most, if not all our other Feasts likewise were; the Reason whereof was, as Sir *Henry Spelman* tells us, and cites very good Authorities to warrant his Assertion, That *Festival* and *fasting* Days were imposed on us by the Romish Church, and such other Provincials as were instituted by our antient Kings and Clergy, which Days were exempted from judicial Trials and Proceedings.

Hillary
Term.

Hillary Term antiently began in *Octabis Epiphaniae*, which is the *thirteenth Day of January*, seven Days before the Return is now,



POCKET COMPANION.

3

now, and ended on the *Saturday next before Septuagesima*, which, being moveable, made this Term longer some Years than others. Common Pleas.

Easter Term, which now begins two Days after *Quindena Pascha* began then, as the Law of *Edward the Confessor* appointed it, at the *Octave of the Feast of Easter*, which is said by him to be verified by *Glanvill*, who makes one of his Writs returnable on that Day. But as it began then nine Days sooner than it now doth; so it ended six or seven Days sooner, (that is to say) before the *Vigil of the Ascension-Day*. Easter Term.

Trinity Term in those Days began as it now doth (with respect to the Time at *Octabas Pentecostes*, which being always the Day after *Trinity Sunday*, is now by the Statute of the 32d of *Henry the Eighth*, appointed to be called *Crastino Trinitatis*; and as to the Day of sitting to do Business, it was by that Statute appointed to begin for ever the *Friday* after the Day of *Corpus Christi*, and to continue nineteen Days; so that the Day of *Corpus Christi* being a moveable Feast. This Term is uncertain as to its Station in the Year, and the whole Frame of *Trinity Term* was by that Statute alter'd to what we now find it. Trinity Term.

Michelmass Term, was by the Statute of *Michaelmas Term*.
16 Car. 1. cap. 6. limited and abbreviated

Common
Pleas.

to what we now find it, which before began on the *Octave of St. Michael*, and two Returns were by that Statute lopped off from the beginning of the Term, and by that Statute it is to begin on the 23d Day of *October*, unless it happens on a *Sunday*, for then it is deferred till the Day following; and this *Octabas Sancti Michaelis* is by Sir Henry Spelman, very truly call'd the *Octaves of St. Michael*.

To enter into the Reasons of the Institutions of the Terms how they came to be alter'd, and by what particular Statutes, is so accurately handled by the before-mentioned Author, and is so little necessary to my present purpose, that I shall here omit it,

And only *In the second Place*, take notice of what Authorities I have from the *Classicks*, to call this Return *in Octabis Sancti Hillarii*, and the rest under that Denomination, at or on the *Octave* of the respective Feasts.

The signifi-
cation of
the Word
In.

The Word *In*, as a *Latin* Preposition, hath been made use of by *Plautus*, to signify upon, as in the Phrase *in re presenti*, which is translated upon the Place; but generally when it signifies upon, it is made use of in a compositive Sense, as in the Words *irruo* to rush upon, *impono* to put upon, *invoco* to call upon; and it likewise

is

POCKET COMPANION.

is made use of to signify our Word *at*, and sometimes *within*, as *Virgil* does in the Words *in triduo within three Days*, but in our Case I apprehend the Word *upon* to be the best *English*, because the Writ is supposed to be returnable *upon* the *Octave*, &c. Common Pleas.

This Word *Octave* carries with it a clear and significant Meaning, and when the Law was before in *English*, it was made use of by *Hearne* in his Pleader, and by *Brownlow*; but sometimes they call'd the *Octave of St. Hillary*, the *Utas of St. Hillary*, and that Word is made use of in several Acts of Parliament, as in the Acts of 33 H. 3. Statutes 2 and 3; and if that should be esteem'd the best Expression, I have no Objection to it; but to say within *Eight Days of St. Hillary*, when the Meaning and the Truth of the Return is within *Eight Days from such Feast*, will not go down as common Sense. Of the Word Octave.

Michaelmas Term contains five Weeks and Two Days, and has six Returns, viz. turns.

In three Weeks from the Day of *St. Michael*.

In one Month from the Day of *St. Michael*.

On the *Morrow of All Souls*.

On the *Morrow of St. Martin*.

Common
Pleas.

On the *Octave* of *St. Martin*.

In *fifteen Days* from the *Day* of *St. Martin*.

Hilary Term contains three *Weeks* complete and hath four *Returns*, viz.

On the *Octave* of *St. Hilary*.

In *fifteen Days* from the *Day* of *St. Hilary*.

On the *Morrow* of the *Purification* of the *Blessed Virgin Mary*.

On the *Octave* of the *Purification* of the *Blessed Virgin Mary*.

Easter Term consists of three *Weeks* and six *Days*, and hath five *Returns*, viz.

In *fifteen Days* from the *Feast Day* of *Easter*.

In *three Weeks* from the *Feast Day* of *Easter*.

In *one Month* from the *Feast Day* of *Easter*.

In *five Weeks* from the *Feast Day* of *Easter*.

On the *Morrow* of the *Ascension* of our *Lord*.

Trinity

POCKET COMPANION:

7
Common
Pleas.

Trinity Term wants one Day of three Weeks,
and hath four *Returns*, viz.

On the *Morrow* of the *Holy Trinity*.

On the *Octave* of the *Holy Trinity*.

In *fifteen Days* from the Day of the
Holy Trinity.

In *three Weeks* from the Day of the
Holy Trinity.

The ancient Method of suing out Pro-
cess, was by giving Instructions to the
Curfitor, to make out and Seal an *Original*
Issuing from the Court of *Chancery* return-
able in this Court, in order to give this
Court a Jurisdiction; for this Court hath
no Jurisdiction but by such *Originals*, ex-
cept for Persons *privileged* in the same
Court; as for the *Prothonotaries*, and their
Entering Clerks, and for *Attornies*, and
other *Officers* of the same, and that by
immemorial Custom. This *Original* when
sued out, was used to be carried to the
Sheriff to have a Return made thereon,
(who did it of course) that the Defendant
had nothing, *i. e.* no Goods or Chattles in
his Bailiwick whereby he could compele
the Defendant's appearance.

And when this *Original* was so return'd,
it used to be carried to the *Custos Brevium*

Common
Pleas.

of this Court, there to be filed in his Office as a Testimony, that this Court had a Jurisdiction to hold Plea of that Suit; and thereupon the *Plaintiff's* Attorney made out his Instructions to the Filazer for a *Capias* to be directed to the Sheriff, in order to have the *Defendant* arrested thereon.

*The present
Practice.*

But of latter Days, the Method has usually been (to prevent Trouble, and for the Ease of the Attornies) for the Plaintiff's Attorney to make out Instructions for the *Capias*, and carry the same to the *Filazer*, who after having made out a Writ thereon, enters the same upon a Remembrance-Roll of that Term, and then delivers over such Instructions to the *Cursitor*, and he makes out an *Original*; and then carries them altogether back to the *Filazer* of the proper County, who afterwards delivers them over to the *Custos Brevium*, and he files them of the proper Terms to which they belong.

The Form of these Instructions, if the Plaintiff proceeded by Special ORIGINAL,
were as follows.

*The usual
Instructions
herebefore
used.*

Middlesex II. Precipe C. D. nuper de
Westm' Gen' (alias dict' if any) quod reddat
A. B. 40 l. quas ei debet & injuste detinet.
Cap' ret' Gro' Animar'.

If

POCKET COMPANION.

9

If it was an *Acetiam Writ* for a Debt, ^{Common} not by *Special Original*, or in *Trespas*, or ^{Pleas.} *Trespas upon the Case*, then the Instructions were in the following manner.

Middlesex ss. *Si A. B. fec' Ec. pone, Ec. The usual*
C. D. nuper de Islington in Com' tuo Gen' Instructi-
Acetiam in debito pro 40 l. or, Acetiam in ons for a
Casu sup' assumptiones, Ec. pro 20 l. as the Capias ret'
 Case was. *Cro. Ani-*

J. Cock.

marum.

But to avoid the *Fine* that is due upon a *Special Original*, the common Practice was to make out Instructions for a common *clausum fregit*, with an *Acetiam* for so much as the Debt was, which now by Means of the following Rule, supplies the Place of a *Special Original*.

For heretofore on every common *Clausum fregit*, and *Acetiam* thereon, the Defendant was intitled to an *Impar lance*, (that is) to plead of another Term, than that in which the Declaration was delivered; but now it may be observed by this Rule, that *Impar lances* are taken away.

B. S.

Mich.

Common
Pleas.

Mich. The Third of King George the
Second.

A Rule of
Court.

It is ordered, that upon all Process sued out of this Court, returnable the first or second Return of any Term, if the Plaintiff declares in London or Middlesex, and the Defendant lives within twenty Miles of London, the Defendant shall plead within four Days after such Declaration delivered, without any Imparlance, and such Declaration may be delivered de bene esse, and in Case the Plaintiff declares in any other County, or the Defendant lives above twenty Miles from London, the Defendant shall plead within eight Days after the Declaration delivered without any Imparlance, and in default of pleading as aforesaid, the Plaintiff may sign his Judgment.

And it is still very proper, to avoid Confusion, that the Instructions for Common Writs and Special Writs, should be Variant and Distinct; as for Example :

Instructions for a Special Writ in Debts

Devonshire. Command A. B. late of South-Molton in your County, that he render to C. D. ten Pounds, which he owes to, and unjustly detains from him.

Returnable in three Weeks,
from the Day of St. Michael.

J Cock.
H.

POCKET COMPANION.

II

Common
Pleas.

If more Defendants than one are in the Writ,
then it must be in this manner:

Devonshire. Command A. B. late of South-
Molton in your County, Gent. that he render
to C. D. ten Pounds, and command E. T. late
of the same Place, Gent. that he render to C. D.
twenty Pounds, which they severally owe to
and unjustly detain from him.

Returnable on the
Octave of St. Hillary.

J. Cock.

As to the Instructions for a Common
Writ, with an *Acetiam* thereto, if literally
translated, according to the Form hereto-
fore used; it is thus.

Devonshire. If A. B. makes you secure in
prosecuting his Claim, then by Pledges and
sufficient Sureties, compel C. D. of Barnstable
in your County, Gent. to answer to the said
A. B. of a Plea, *crin an Action* of Trespass;
and also to the said A. of a Plea of Trespass
upon the Case, upon Promises and Undertak-
ings for twenty Pounds.

Returnable in three Weeks,
from the Day of St. Michael.

J. Cock.

But as *Tempora mutantur & nos muta-*
mur in illis, if it should be thought better
that the ancient Forms, as to the Instructions
for Writs, may be altered, I submit whether
the Instructions for a Common Writ may not
be thus.

Devon-

Common
Pleas.

Devonshire. A. B. against C. D. of Barnstable in the said County, Gent. of an Action of Trespass; and also in an Action of Trespass on the Case, on several Promises and Undertakings, for twenty Pounds.

*Returnable in three
Weeks, from the Day
of St. Michael.*

J. Cock.

If it be against several Defendants, and there are several Accionants, then say,

And also against A. B. in an Action of Trespass on the Case, for twenty Pounds, on several Promises and Undertakings. And against the said C. D. of a Plea of Debt of twenty Pounds upon Bond (or for Money borrowed) or for Rent, as the Case is.

The Form of a Capias in Debt.

GEORGE the second, by the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, To the Sheriff of Norfolk, Greeting, We command you that you take C. D. late of Thetford, in your County, Gent. and E. F. late of T. in your County, Yeoman, if they are to be found in your Bailiwick, and safely keep them, so that you have their Bodies before our Justices at Westminster, on the Morrow of All Souls, to answer to A. B. of a Plea that he render to him fifty Pounds, which he owes to, and unjustly detains from him, and have you there this Writ. Witness Sir Robert Eyre, Knight,
at

POCKET COMPANION.

13

at Westminster, the Twenty-eighth Day of Common
June, in the sixth Year of Our Reign. Pleas.

If the Writ be in Trespass, then you say,

In an *Action* wherefore with Force and Arms *Trespass*.
they broke the Close of the said *A.* and did
other Wrongs to him, to the great Damage of
the said *A.* and against our Peace.

And if in Case. And also to answer the *Case*.
said *A.* according to the Custom of our Court
of *Common Bench*, in an *Action of Trespass on*
the Case, upon Promises and Undertakings, to
the Damage of the said *A.* twenty Pounds.

And if the Acetiam be only against one of
the Defendants, then you say thus,

And also that the said *C.* shall answer to *Acetiam a-*
the said *A.* according to the Custom of our *gainst two.*
Court of *Common Bench*, in an *Action of Tres-*
pass on the Case, upon Promises and Under-
takings, to the Damage of the said *A.* twen-
ty Pounds.

If there are several Acetiams of different
Natures against several Defendants, then
thus,

And also severally to answer *C.D.* accor-
ding to the Custom of our Court of *Common*
Bench (that is to say) the said *C. D.* in a cer-
tain *Action of Trespass on the Case*, upon Pro-
mises and Undertakings, to the Damage of
the

Common
Pleas.

the said *A.* twenty Pounds; And the said *B.* in a certain Plea of Debt for fifty Pounds upod Demand; and have you there, &c.

If it be in Assault and Battery, say thus,

And also to answer *C. D.* according to the Custom of our Court of Common Bench, in a Plea of Trespass and Assault.

The Form of a special Original.

GEORGE the Second, King of Great Britain, France, and Ireland, Defender of the Faith, and so forth. To the Sheriff of Devonshire, Greeting. If *A. B.* makes you secure in prosecuting his Claim, then put *C. D.* of Barnstable in your County, Gent. to find Pledges and sufficient Sureties that he be before our Justices at Westminster, on the Morrow of All-Souls, to answer to *A. B.* in an Action, that whereas the said *C.* on the first Day of May, in the the Year of our Lord 1731. at Barnstable aforesaid, in your County, was indebted to the said *A.* (and then recite the Declaration to the Words) to the Damage of the said *A.* one Hundred Pounds, and then go on. And have you there the Names of the Pledges, and this Writ. Witness Our Self at Westminster, the 23d Day of October, in the sixth Year of Our Reign.

The Form of a Special Capias differs not from a Common Capias, only in the Recital of the Declaration; so that instead of the Words,

Words, of a Plea, wherefore with Force Common
and Arms he broke the Close of the Plaintiff, Pleas.
you say,

Of a Plea, that whereas on the first Day A Decla-
of May, in the Year of our Lord 1731, the ration for
said C. was indebted to the said A. in the Sum Money lent.
of ten Pounds, for the like Sum lent by the
said A. to the said C. at his special Instance and
Request: And being so indebted, the said C.
in Consideration thereof, afterwards (that is
to say) on the said first Day of May, in the
said Year of our Lord 1731, at Barnstable
aforesaid, in the said County, undertook, and
then and there faithfully promised the said A.
that he the said C. would well and truly con-
tent and pay him the said A. the said ten
Pounds, whenever after he the said C. should be
thereto required. Nevertheless the said C. not
regarding his Promise and Undertaking, made
in the Manner as above, but contriving and frau-
dulently intending, craftily and subtilly to de-
ceive and defraud the said A. in this Particular,
hath not paid him the said A. the said Sum of ten
Pounds, or in any wise made him Satisfaction
for the same (although the said C. on the said
first Day of May, in the said Year, and often
afterwards at Barnstable aforesaid, was by
the said A. thereto required,) but hitherto
altogether hath, and still doth refuse to pay, or
make him any Satisfaction for the same, to the
Damage of the said A. twenty Pounds, as it is
said. And have you there this Writ. Witness
Sir Robert Eyre, Knight, at Westminster, the
23d Day of October, in the sixth Year of Our
Reign.

J. Cock.

If

Common
Pleas.
An Obser-
vation on
putting in
Bail to a
Testatum
Writ.

If the Defendant lives in the Country; as for Instance in *Suffolk*, and the Cause of Action arises in *London*, and therefore you would try the Cause there, then you must make out a *Testatum* into the County where the Party lives, by which it is suggested, that a *Capias* had before been taken out in *London*, and that the Sheriffs of *London* had made a Return thereto, that the Defendant was not to be found in their Bailiwick, and that it was sufficiently testified, that the Defendant lurked, and wandered up and down in the County of *Suffolk*, so that when the Defendant is taken, he is to put in Bail with the Filazer of *London*, to answer to the Plaintiff upon the Writ made out there, and not in the County where the Defendant is taken; and therefore the Defendant's Attorney in such Case must be wary of this; for I myself know an Instance where a *Capias* was taken out, directed to the Sheriffs of *London*, and a *Testatum* issued upon that Writ, directed to the Sheriff of *Suffolk*, upon which the Defendant was arrested, and the Defendant's Attorney caused the Bail-piece to be filed with the Sheriff of *Suffolk* in due Time, but the Plaintiff's Attorney took no Notice of that Bail (nor am I certain whether he knew of it) for the proper Office where he searched, and where

where the Bail-piece should have been Common-
 filed, was with the Filazer of London; the Plaintiff's Attorney got the Bail-Bond, af-
 signed to the Plaintiff, and proceeded
 thereon, and the Plaintiff being delayed
 of a Trial, the Bail could never be let in
 to plead in the Original Action; but the
 Plaintiff got Judgment upon the Bail-
 Bond, and the Bail was forced to pay
 the Money, and as I remember, the Debt
 was two Hundred and odd Pounds, and
 what was a greater Hardship in this Case,
 the Defendant was a Bankrupt, and they
 intended to plead his Certificate; and this
 was the Case of *Wickens and Coxedge* in
Mich. the Second of his present Majesty's

The Form of a *Testatum* is as follows.

George the Second, &c. going quite through
 the *Acetiam*, till you come to the Words, to
 the Damage of the said A. twenty Pounds;
 then you go on thus; and whereof our Sheriff
 of Suffolk, hath made a Return to our Justi-
 ces at Westminster, at a certain Day now
 past, that the said C. is not to be found in his
 Bailiwick; whereas it is testified in our same
 Court, that the said C. lurks and wanders up
 and down in your County; and have you there
 this Writ, Witness, &c.

If the Defendant lived within a Liber-
 ty, which the Sheriff could not enter, the

anci-

Common
Pleas.

ancient Method of proceeding was ; the Sheriff, upon the *Capias* directed to him, made a Mandate to the *Bailiff* of the *Liberty* where the *Defendant* was ; and if the *Defendant* was not taken upon that Mandate, the Sheriff made a Return upon the *Capias* directed to him, that the *Defendant* was in such a *Liberty*, to the *Bailiff* of which he had made a Mandate to take the *Defendant*, and that the *Bailiff* had given him no manner of Answer thereto ; upon which his Majesty's Writ, called a *Non Omittas*, issued, by which the King commands the Sheriff not to pass by, but to enter into such *Liberty*, and take the *Defendant*, so that he might have his Body at the Day of the Return ; but the Method for Expedition's sake now is to make out a Writ of *Non omittas* at once suggesting this Matter ; so the *Capias* and *Non omittas* are made out at the same Time, and you return the *Capias* your self.

The Form of which Non omittas is as follows.

George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. To the Sheriff of Suffolk, Greeting. We command you, that you omit not, by reason of the *Liberty* of *St. Ebbelred* in your County, but that

that you enter therein, and take *C. D. late Common* of *Thetford in the County of Norfolk*, if he *Pleas.* is to be found in your Bailiwick, and safely keep him, so that you have his Body before our Justices at *Westminster*, on the morrow of *all Souls*, to answer *A. B.* of a Plea, wherefore with Force and Arms he broke the Close of the said *A.* at *Thetford*, and did other Wrongs to the said *A.* to his great Damage, and against our Peace; and also to answer the said *A. B.* according to the Custom of our Court of Common Bench, in a Plea of *Trespas on the Case*, for Promises and Undertakings unperformed by the said *C.* to the Damage of the said *A.* twenty Pounds; and inasmuch as you have made a Return to our Justices at *Westminster*, at a certain Day now past, that the Bailiff of the said Liberty (to whom, by Virtue of our Writ to you directed, you had by your Mandate commanded, that he should take the said *C.*) had given you no Answer thereto; and have you there this Writ. Witness Sir *Robert Eyre*, Knight, at *Westminster*, the 23d Day of *October*, in the sixth Year of our Reign.

The Manner of putting in Bail in the Common Pleas in London or Middlesex, is not by filing a Bail-Piece, but it is done by an Entry in the Filazer's Book; though the Filazers vary a little in the Manner thereof; but in London the Manner of the Entry is thus.

London.

Common
Pleas.

London. *Capias* Jobannem Doe nuper de
London, Yeoman, *rev' xv. Pasche Ric'o Roe.*

Manucapt. Johannes Denn de Bread-
street London, Turner.

Ricardus Fenn de Friday-
street London, Packer.

Def. Manucepit in Ducentis
libris.

Userque manucaptorum in
Centum libris.

Peter Burton Attorn.
pro Defend.

But now it is to be in English, I submit
this Method to the Consideration of those
concerned therein.

The Entry of the Note of the Bail. London. On a *Capias* returnable on the
Octave of St. Hillary, against John Doe, late
of London Mercer, at the Suit of Richard
Roe; the Bail are,

John Denn of Breadstreet London, Hosier,
and

Richard Fenn of Queenhithe London,
Mealfactor.

The Defendant becomes Bound for himself
in two hundred Pounds, each of the Bail
in one hundred Pounds.

George Woodcraft Attorney
for the Defendant.

Taken and acknowledged
(to be perfected here-
after) the 18th Day of
December, 1732, before

R. Price.

So

So that you call upon the *Filazer*, and Common
give him Notice when the *Bail* are ready, Pleas,
and he attends with you at the Judge's
Chamber, and there the *Bail* enter into a
Recognizance, and all the Note or Entry
made of it is, that before mentioned, made
in the *Filazer's* Book; but if *Nul tiel Re-*
cord be pleaded in an Action of *Debt*, or
to a *Scire Facias* on that *Recognizance*;
then the *Filazer* draws you up a Form of
the Entry of the *Recognizance*, which you
make Use of to verify the Record; and
the Condition of the said *Recognizance* is
as follows.

You (naming the Defendant, if present) do
acknowledge to owe unto the Plaintiff twenty
Pounds, and you (naming the Bail) do se-
verally acknowledge to owe unto the same
Person, the Sum of ten Pounds apiece; to
be levied upon your several Goods and Chat-
tles, Lands and Tenements, upon Condition,
that if the Defendant be condemned in the
said Action, he shall pay the Condemnation
Money, or render himself a Prisoner into
the Fleet for the same; and if he fail so
to do, you (naming the Bail) do undertake
to do it for them.

The

Common
Pleas.

*The Form of an Entry of a Recognizance of
Bail in Case.*

Middlesex. The Sheriff was commanded that he should take *Martha Lundie*, late of *Westminster* in his County, *Widow*, if she could have been found in his Bailiwick; and that he should have kept her safely, so that he might have had her Body at this Day, (that is to say) on the *Morrow of All Souls*, to answer *Robert Petre* of an Action, wherefore she broke the Close of the said *Robert*, with Force and Arms, and did other Wrongs to the said *Robert*, to his great Damage, and against the Peace of our Sovereign Lord the King; and also in a Plea of *Trespass upon the Case*, on Promises unperform'd, to the Damage of the said *Robert* thirty Pounds. And now here at this Day, *Joseph Summers* of *York-street* in *Covent-Garden*, in the said County, *Gentleman*, and *Alicia Arthur* of *St. James's Street*, in the said County *Spinster*, came personally before Sir *Robert Eyre*, Knight, and his Companions Justices of this Court of *Common Bench*: And they and each of them acknowledged themselves to owe to the said *Robert* the Sum of thirty Pounds; which said Sum they the said *Joseph* and *Alicia*, and each of them did will and grant, for them and their Heirs, to be made and levied of their, and each of their Lands and Chattles, to the Use and Behoof of the said *Robert*; and also at the same Day, the said *Martha* came personally before the same Chief Justices, and acknowledged to owe to the said *Robert* the Sum of sixty Pounds; which said Sum of sixty
Pounds

Pounds the said *Martha*, for herself and her Heirs, will'd and granted for herself and her Heirs, to be made and levied of her Lands and Chattles to the Use and Behoof of the said *Robert*, subject to this Condition, that if Judgment should happen to be given in the same Court here, for the said *Robert*, against the said *Martha*, in a certain Plea of *Trespas* upon the Case; then the said *Martha* should make Satisfaction to the said *Robert*, for all such Damages which should be awarded to the said *Robert* in the same Court here against the said *Martha*, or should render her Body, in Execution of the said Judgment, to the Prison of the Fleet, and so forth.

Concerning [Bails to be taken in the Country, the following Rule was made,

Termino Pasch. 5 Gul. & Maria.

ORDERS to be observed by Commissioners impowered by Commission, in Pursuance of an Act of Parliament, for taking Special Bail in the Country upon Actions and Suits depending, or to be depending, in his Majesty's Court of Common Pleas at Westminster.

First, It is ordered, That before any Bail be taken by Virtue of the said Act, a true Copy of the Writ on Parchment, to which the Defendant is to put in Bail,

Common
Pleas.

Bail, shall be brought to the Commission-
er before whom such Bail is to be taken ;
and thereupon the Recognizance or Bail-
piece, shall be fairly drawn and engrossed
on the said Parchment Copy, in this or
the like Form, as the Case shall be, viz.

A. B. Attorn'
pro defend'

Manucriptores Johan-
nes Denn de Black-
barnesly in Paroch' de
Settle in Com' E. Gen'
& Rich'm Fenn de
eadem Gen'.

Capt' & cognit' decimo
die Martii Anno
Dom' 1720. de bene
esse coram me A. B.
un' Commissionar'.

Pars ipsa in
20 l. uterque
M. in 10 l.

If the Defendant be not present, then the
Bail are usually bound in double the Sum
in the Writ, otherwise only single.

The Condition of which said Recogni-
zance shall be to this effect, viz.

You [naming the Defendant, if present]
do acknowledge, &c. as before.

Secondly, It is ordered, That the Affi-
davit of the due Taking of every such Bail,
shall be made either before some Judge of
the Common Pleas, to whom the Bail shall
be transmitted, or before some Person who
shall

shall have Power to take Affidavits in Mat-
ters and Causes depending in the said Court.

Common
Pleas.

Thirdly, It is ordered, That all Bails taken by any Commissioner within the distance of forty Miles from the Cities of *London* and *Westminster*, shall be transmitted to the Lord Chief Justice of the Court of *Common Pleas*, or to one of the Justices of the said Court, within Ten Days after the Taking thereof; and all Bails taken by any Commissioner above the distance of forty Miles from the said Cities of *London* and *Westminster*, shall be transmitted within twenty Days after the Taking thereof, unless all the said Justices shall be in their Circuits, and then as soon as any of them shall be returned to *London* out of his Circuit.

Bail taken within forty Miles of London, transmitted in ten Days.

If above forty Miles in twenty Days.

Fourthly, Also every Commissioner is to have a Book kept purposely for entering exactly the Names of the Defendant and his Bail, and of the Plaintiff, as it is in the Bail-Piece, and the Time of the Taking thereof, and the Name of him by whom such Bail shall be transmitted.

Fifthly, It is further ordered, That the Plaintiff's Attorney shall be at Liberty to repair to the Commissioner's Book for the Names of the Bail, to the End that they

C

may

Common
Pleas.

Plaintiff
may except
against
Bail with-
in twenty
Days after.

may enquire of the Sufficiency of them; and if they are found insufficient, they may except against them within twenty Days after the said Bail is transmitted; and Notice to the Plaintiff or his Attorney of the Taking thereof: And in that Case the Defendant must either put in better Bail, or the Cognizors of such Bail must justify themselves in open Court, either by Affidavit taken before such Commissioner that took the said Bail, or by Oath made in Court, or before one of the Judges of the said Court.

Geo. Treby.

Edw. Nevill.

John Powel.

Tho. Rokeby.

Bail-piece
to be filed.

By a Rule made *Hill. 6 Georgii*, It is further ordered, That all Bail-Pieces, taken within such respective Distance, as is above directed, shall be transmitted within the Time above limited, and after such Transmission, shall be forthwith deliver'd to, and filed with the proper Officer, to be entered upon Record, or otherwise it shall be as no Bail; and the Plaintiff is at Liberty to proceed on the Sheriff's Bail-Bond, as if no such Bail were ever put in. And the Defendant, in Case he be admittable to plead to the original Action, shall not be admitted so to do, unless he first pay the full Costs to the Plaintiff for the Pro-
secuti-

POCKET COMPANION.

27

secution on the Bail-Bond; and plead as of Common
the Time when the Bail should have been Pleas.
duly entered.

If the Defendant does not put in Special
Bail (when required by these Rules) you
may get the Sheriff to assign over his Bond,
and take out the *Capias* upon it, a Copy of
which you personally serve on the Defen-
dants.

Rules and Orders lately made concerning Bails.

Communi Banco.

*Trinity Term, the 3d and 4th of King
George the Second.*

IT is Ordered, That from and after the last
Day of this present Term, if special Bail ^{Special} Bail to be
put in by the Defendant, be excepted to, ^{permitted &}
the Defendant shall perfect his Bail within ^{Days after}
four Days after such Exception taken, in ^{Exception.}
Default whereof the Plaintiff may proceed
upon the Bail-Bond.

Per Cur'.

Communi Banco.

*Michaelmas Term, in the 6th Year of the
Reign of our Sovereign Lord King George
the Second.*

IW Hereas, by a Rule of this Court,
made in *Hillary* Term in the sixth
Year of the Reign of the late King *George*
the First, is was, among other Things, Or-
dered,

Common
Pleas.

*Bail taken
by Com-
missioners
to be trans-
mitted in
10 Days,
if within
40 Miles of
London,
and 20
Days if a-
bove.*

*Otherwise
shall not be
received or
filed with-
out leave of
the Court.*

dered, That all Bails taken by Commissioners, pursuant to the late Act of Parliament, for taking special Bails in the Country, should be transmitted to the Lord Chief Justice, or to one of the Justices of this Court, viz. Every Bail taken within 40 Miles of London, within 10 Days after the Caption thereof; and every Bail taken above 40 Miles from London, within 20 Days after the Caption thereof, unless all the Justices should be in their Circuits, and then as soon as any one of them should be returned out of his Circuit, and after such Transmission, should be forthwith delivered to, and filed with the proper Officer to be entred upon Record; or otherwise it should be as no Bail; and the Plaintiff at Liberty to proceed on the Sheriff's Bond, as if no such Bail were ever put in. And whereas the said Rule hath proved ineffectual, and several Abuses are daily committed by Defendants Attornies suppressing such Bails, or neglecting to file the same by the Time limited in the said Rule, to the manifest Wrong and Injury of the Plaintiffs in such Actions, and in Contempt of this Court; now for the remedying thereof, *It is Ordered,* That from and after the last Day of this present Michaelmas Term, all Bails taken before any Commissioner in the Country shall be transmitted and filed with the proper Officer, according to the said Rule, and that no such Bail shall be received or filed, unless the same be transmitted within the respective Times appointed by the said Rule, without Leave of this Court first had and obtained.

*Per Cur.
Communi*

Communi Banco.

The same Term.

2. **W** Hereas it has been usually practised in this Court in all Cases where Bail-Bonds have been taken, that if the same Bail taken by the Sheriff be put in above, that such Bail shall not be excepted against, but shall stand good and absolute; and whereas such Practice hath been found to be Inconvenient in many Instances, *Tho' the Bail taken by the Sheriff be put in above, yet they may be excepted against.* It is therefore Ordered by the Lord Chief Justice, and the rest of the Justices of this Court, that from and after the last Day of this present Term in all Cases wherein Bail-Bonds shall be taken, and the same Bail is put in above, the Plaintiff may except against such Bail.

Per Cur'.

Communi Banco.

The same Term.

3. **I** *It is Ordered* by the Lord Chief Justice, and the rest of the Justices of this Court, That from and after the last Day of this Term no Attorney of this or any other Court, or any Person practising as such, shall be Bail in any Suit or Action depending in this Court. *No Attorney to be Bail.*

Per Cur'.
Communi

Common
Pleas.

Communi Banco.

The same Term.

Bail on Writs of Error to be perfected in 4 Days. 4. **W**Hereas the Rule made in *Trinity* Term, in the Third and Fourth Years of his present Majesty's Reign, for obliging Defendants to perfect their special Bail within four Days after Exception taken, has answer'd the Ends for which it was made; but no Provision has yet been made, touching Bail put in on Writs of Error: *It is therefore Ordered*, That in all Cases where Bail shall be filed on Writs of Error, such Bail shall likewise be perfected within four Days after Exception taken thereto, or in Default thereof the Clerk of the Errors of this Court shall *Non-Pros* such Writ of Error. *Per Cur'.*

Communi Banco.

The same Term.

No Bailiff, &c. shall be Bail in any Action. 5. **W**Hereas many Inconveniencies happen in Causes depending in this Court, by reason that Sheriffs Officers, Bailiffs, and other Persons concerned in the Execution of Process, offer themselves, and are permitted to be Bail in many Actions, and for great Sums of Money; now for Prevention of the like Mischief and Inconveniencies for the future; *It is Ordered* by the Lord Chief Justice, and the rest of the Justices of this Court,

POCKET COMPANION.

31

Court, that from and after the last Day of Common Pleas this present Term, no Sheriff's Officer, Bailiff, or other Person concerned in the Execution of Process shall be permitted or suffered to become Bail in any Action or Suit depending in this Court.

Per Cur.

It will not be thought, I hope, unnecessary before I proceed, to insert Precedents for Declarations, to take Notice of the Alteration the Law has received by several Acts of Parliament, and the Practise thereof as to this Court, by several Rules of Court made for that Purpose.

By the Act of the 12th of the late King George, Entitled, *An Act to prevent frivolous and vexatious Suits*; 'none are to be held to Bail in a Superior Court under ten Pounds, nor in an Inferiour Court under forty Shillings; but the Defendant is only to be served with a Copy of the Process, and on his not appearing thereto, within four Days after such Return, the Plaintiff's Attorney may enter a Common Appearance, or file Common Bail for him, and proceed thereon, as if such Defendant had entred a Common Appearance, or filed Common Bail.

'And where the Cause of Action amounts to the Sum of Ten Pounds or forty Shillings respectively, Affidavit shall be made of, and filed, of such Cause of Action, and the Sum specified in such Affidavit, is to be

Common
Pleas.

‘ indorsed on the Back of such written Pro-
‘ cess, for which Sum, the Sheriff, or other
‘ Officer, to whom such Writ or Process shall
‘ be directed shall take Bail, and for no more;
‘ and where the Sum is not indorsed, the
‘ Party shall be served with a Copy of the
‘ Process only.

Habeas
Corpus.

‘ And no *Habeas Corpus* is to lie where the
‘ Action does not exceed the Sum of five
‘ Pounds, though there may be other Actions
‘ against the same Defendant for more.’

By an Act of the 5th of King George the
Second, it is enacted, ‘ That after the End of
‘ this Session of Parliament, in all Cases where
‘ the Cause of Action shall not amount to
‘ the Sum of ten Pounds or upwards in any
‘ Superior Court, or to forty Shillings or up-
‘ wards in any Inferior Court, the Writ, Process,
‘ Declaration, and all other Proceedings, shall
‘ be in the *English* Tongue, and Written in
‘ Words at Length in a common legible
‘ Hand; and the Defendant in such Cases (a
‘ Copy of such Process in *English* having
‘ been served, as by the said Act is directed,)
‘ shall appear at the Return thereof, or with-
‘ in eight Days after such Return; and the
‘ Affidavit of the Service of such Process may
‘ be made before any Judge or Commissioner
‘ of the Court, out of which such Process
‘ shall issue, authorized to take Affidavits in
‘ such Courts, or before the proper Officer,
‘ for entering common Appearances in such
‘ Courts, or his lawful Deputy, and the Af-
‘ fidavit shall be filed *Gratis*.

‘ No Attorney, Bailiff, or other Person,
‘ shall take or demand more than five Shil-
‘ lings, for making and serving a Copy of
‘ such

ROCKET COMPANION.

JE

“such Process out of any Superiour Court, Common-
“or more than one Shilling out of an In. Pleas-
“feriour Court.

“In particular Franchises and Jurisdictions,
“the proper Officer there shall execute such
“Process.

“Upon every Copy of such Process shall be
“written in like Manner an *English* Notice to
“such Defendant, of the Intent of such Ser-
“vice to the Effect following, (that is to say)
A. B. you are served with this Process to the
Intent, that you may by your Attorney ap-
pear in his Majesty's Court of
at the Return thereof being the

Day of in order to your Defence in
this Action; “and for which said *English*
“Notice, no Fee or Reward shall be deman-
“ded or taken.

“After the End of this present Session of
“Parliament, where the Cause of Action
“shall not amount to ten Pounds or upwards,
“in any Superior Court, or to forty Shillings
“or upwards in any Inferior Court, no spe-
“cial Writ, nor any Process, specially therein
“expressing the Cause of Action, shall be
“sued forth, in order to compel any Person
“to appear thereon in such Court; and all
“Proceedings and Judgments that shall after
“the End of this Session be had on such Writ
“or Process, shall be void, and of none effect.
“And every Attorney or Officer of such
“Court, suing or issuing such Writ or Process,
“shall forfeit ten Pounds to the Person ag-
“grieved thereby, who may recover the same
“by Action of Debt, Bill, Plaint, or Infor-
“mation in any Court of Record at *Westmin-*

The ATTORNEY'S

‘ *fter* with full Costs of Suit ; and no Effoin,
 ‘ Protection, or Wager of Law, or more than
 ‘ one Impar lance shall be allowed. The said
 ‘ Act, except wherein the same is hereby ex-
 ‘ plained and amended, shall be continued
 ‘ together with this Act, from the End of
 ‘ this Session of Parliament for seven Years,
 ‘ and from thence to the End of the then
 ‘ next Session of Parliament, and no longer.’

Note ; Long before this Act of Parlia-
 ment, the Judges of this Court had alrea-
 dy provided against that Mischiefe, for
 which the Remedy was intended in that
 Clause, where no special Writs are to be
 sued out for Sums under ten Pounds, by a
 Rule far more Extensive, and providing a
 far better Remedy for the Benefit of the
 Subject, than this Clause ; which is the
 Rule before mentioned in Page the 10th.

*Another Rule made concerning Declarations
 is as follows :*

Paschæ tertio Georgii Secundi Regis.

It is Ordered, That all Declarations in Lon-
 don or Middlesex, delivered pursuant to
 the Rule of this Court, made the last Day of
 Michaelmas Term, on Procefs returnable the
 first or second Returns of any Term, where the
 Defendant lives within twenty Miles of Lon-
 don, shall be delivered with Notice, that the
 Defendant or Defendants plead to such Acti-

on within *four Days* after such *Declaration* Common delivered, and that all *Declarations* where Pleas. the *Plaintiff* declares in any other County, or the *Defendant* lives above 20 Miles from London, such *Declaration* shall be deliver'd, with Notice to plead, within eight Days after such *Declaration* deliver'd; the Rule made in *Michaelmas Term* in the first Year of the Reign of his present Majesty, to establish the Practice of the Court upon the late Act of Parliament to the contrary, notwithstanding.

R. Eyre.

Ro. Price.

Alex. Denton.

J. Fortescue A.

The Rule of Court of *Michaelmas Term* the first Year of the late King, to which the last mention'd Rule refers, is as follows.

*Termino Sancti Michaelis Anno Primo
Georgii Secundi Regis.*

‘ TO establish the Practice of this Court
‘ upon the late Act of Parliament, for
‘ preventing frivolous and vexatious Arrests,
‘ *It is Ordered*, That from and after the
‘ last Day of this present Term, in all Causes
‘ where a Copy of the Process of this Court
‘ is served upon any *Defendant*, or *Defen-*
‘ *dants*, and an Appearance is entred for
‘ such *Defendant* or *Defendants*, by the
‘ *Plaintiff's* Attorney, pursuant to the said
‘ Act, the *Plaintiff's* Attorney, in such Case,
‘ shall leave a Copy of the *Declaration* in the
‘ Office,

Common
Pleas.

Office, and likewise give Notice thereof to the *Defendant*, or *Defendants*, by delivering an *English* Notice, written in Secretary Hand, to such *Defendant*, or *Defendants*, or leaving the same at the last, or most usual Place of Abode of such *Defendant*, or *Defendants*, signifying the nature of the Action, at whose Suit it is prosecuted, and in whose Office such *Declaration* is left: And that in Case of *special Writs*, returnable the *first Returns* of *Hilary* and *Trinity* Terms, and the *first* and *second Returns* in *Easter* and *Michaelmas* Terms, such *Defendant*, or *Defendants* should take Notice, that unless such *Defendant* or *Defendants* plead to such Action within four Days after the Appearance Day of the Return of such Writ: And in Case of a *common Capias*, or any other *special Writ*, within the first four Days of the next Term, Judgment will be entred against such *Defendant* or *Defendants* by Default. And from the Time of giving such Notice as aforesaid, such *Declaration* shall be deemed well deliver'd to such *Defendant* or *Defendants*, and not otherwise.

And in case such *Defendant*, or *Defendants*, after such Notice given, does not plead by the Time the Rules for pleading are out, the Plaintiff in such Case may sign his Judgment, (*a Rule to plead being first given*) without any other or further calling for a Plea, and thereon give Notice of executing his Writ of *Inquiry*, either by delivering Notice in Writing to such *Defendant*, or *Defendants*, or by leaving the same

POCKET COMPANION.

37

‘ same at the last or most usual Place of Common,
‘ Abode of such *Defendant*, or *Defendants*; Pleas,
‘ which shall be a sufficient Notice to such
‘ *Defendant* or *Defendants*, of the Time of
‘ executing such Writ of *Inquiry*.

And it is further Ordered, ‘ That from and
‘ after the last Day of this present Term,
‘ the Rule made the last *Trinity* Term, to
‘ establish the Practice of the Court upon the
‘ said late Act of Parliament, shall be dis-
‘ charged.’

R. Eyre.

Rob. Price.

Alex. Denton.

S. Cowper.

Lest I should be condemned for a need-
less Repetition, I have omitted to insert
the *Declarations* on common *Assumpsits*, be-
cause I have before inserted them among
the Proceedings in the King’s-Bench, and
the Alteration is no more than in this
manner.

Declarations.

Lond. *A.B.* late of the Parish of *St. Michael* *ADeclara-*
Queenhithe, London, was attach’d to an- tion upon a
swer to *C.D.* of a Plea (or in an Action) of Tres- promissory
pass upon the Case, and so forth; and the said Note a-
C. by *John Cork*, his Attorney, complains, that gainst the
whereas *Defendant*

Common Pleas. whereas the said *A.* on the tenth Day of *March*, one thousand seven hundred and thirty one; at the Parish of *St. Mary le Bow*, in the Ward of *Cheap, London*, made a certain promissory Note in Writing, and subscribed his Hand writing thereto, and deliver'd the same to the said *C.* by which he promis'd to pay to the said *C.* or to his Order, Twenty Pounds of lawful Money of *Great Britain*, one Month after Date, for Value receiv'd; by reason of which, and by Force of the Statute in that Case made and provided, the said *A.* became liable to pay to the said *C.* the said twenty Pounds, at the Time in the said Note for that Purpose limited and appointed; and being so indebted, the said *A.* in Consideration thereof, the same Day and Year abovementioned, at the Parish and Ward aforesaid, undertook, and faithfully promised the said *C.* that he would well and truly pay him the said Sum of twenty Pounds mention'd in the said Note, at the Time for that Purpose therein limited and appointed.

Another against the Defendant as Drawer payable on Demand, That *A.* made another Note for 100*l.* thereby promising to pay the same on Demand. And whereas also the said *A.* afterwards, (that is to say) on the 10th Day of *Apr.* in the Year of our Lord One thousand seven hundred and thirty-two, at *London* aforesaid, in the said Parish and Ward, made another promissory Note in Writing, bearing Date the Day and Year last above mention'd, and subscribed the same with his own Hand, and deliver'd it to the said *C.* and thereby promised to pay to the said *C.* One hundred Pounds of like lawful Money of *Great Britain*, on Demand, for Value receiv'd; by reason whereof, and by Force of the Statute in that Case made and

and provided, the said *A.* became liable to pay to the said *C.* the said One hundred Pounds upon Demand; and being so liable, the said *A.* afterward (that is to say) the same Day and Year, at *London* aforesaid, in the said Parish and Ward, in Consideration thereof, undertook, and faithfully promised the said *C.* he would well and truly pay him the said One hundred Pounds when ever after he should be thereto required.

And whereas one *G. F.* afterwards, (that is to say) on the tenth Day of *May*, in the said Year of our Lord One thousand seven hundred and thirty-two made his promissory Note in Writing, bearing Date the Day and Year last mention'd, and subscrib'd the same with his own Hand, and deliver'd it to the said *A.* and thereby faithfully promised, that he the said *G.* would pay to the said *A.* or Order, fifty Pounds six Weeks after Date, for Value receiv'd: And afterwards, and before Payment of the said fifty Pounds, or any part thereof to the said *A.* (that is to say) on the tenth Day of *June*, in the Year aforesaid, at the Parish and Ward aforesaid, the said *A.* by an Indorsement on the said Note in Writing, bearing Date the Day and Year last mention'd, subscrib'd with the Hand-writing of the said *A.* directed and appointed the said *G.* to pay the Contents of the said Note to him the said *C.* or his Order, for Value receiv'd. And the said *C.* saith, That in Fact, he the said *C.* after the Expiration of the said six Weeks after the Date of the said Note, (that is to say) the first Day of *July*, in the Year aforesaid, at the said Parish and Ward, shewed

*Another
Declarati-
on against
the Defen-
dant, as
Indorser,
That G.F.
made a
Note for
50l. pay-
able to A.
That A.
indors'd it
to G.*

Common
Pleas.

shewed the said G. the said Note, with the said Indorsement thereon, and required the said G. to pay him the said C. the said fifty Pounds therein contain'd, according to the Tenor of the said Note and Indorsement thereon made as aforesaid; but he the said G. then and there refused to pay the same to the said C. of which the said A. afterwards, (that is to say) on the said first Day of July, in the Year aforesaid, at the said Parish and Ward had Notice; by reason whereof, and by Force of the Statute in that Case made and provided, the said A. became liable to pay to the said C. the said fifty Pounds mention'd in the said last mention'd Note, and being so liable, the said A. afterwards, (that is to say), on the First Day of July, in the said Year of our Lord, at London aforesaid, in the Parish and Ward aforesaid, in Consideration thereof, undertook, and faithfully promised the said C. that he the said A. would well and truly pay him the said fifty Pounds whenever after he should be thereto required.

And whereas on the tenth Day of August, in the said Year of our Lord One thousand seven hundred and thirty-two, at the said Parish and Ward, one J. M. made a promissory Note in Writing, bearing Date the Day and Year last mention'd, and subscribed the said Note with his own Hand, and deliver'd the same to one S. T. and thereby promised to pay to the said S. T. or Order, One hundred Pounds of like lawful Money of Great Britain, one Month after Date, for Value received. And the said S. T. before Payment of the said last mention'd Sum, or any Part thereof

Another
Declarati-
on against
the Defen-
dant, as a
Second In-
dorser.
That J. M.
made a
Note paya-
ble to S. T.

that he the said S. T. before Payment of the said last mention'd Sum, or any Part thereof

Common
Pleas.

(that is to say) on the 20 Day of *Aug.* in the said Year, by his Indorsement in Writing upon the said Note, bearing Date the Day and Year last mention'd, subscribed with his own Hand at *London* aforesaid, in the Parish and Ward aforesaid, appointed and directed the said *J. M.* to pay the said One hundred Pounds mention'd in the said Note to one *W. L.* or his Order, for Value receiv'd. And the said *W. L.* afterwards, and before the Expiration of the said Month, after the Date of the said Note, and before Payment of the said One hundred Pounds therein mention'd, or any Part thereof, (that is to say) on the 21 Day of *Aug.* in the said Year, by another Indorsement in Writing, bearing Date the Day and Year last above mention'd, subscrib'd with his own Hand, at *London* aforesaid, in the said Parish and Ward, appointed and directed the said *J. M.* to pay the said One hundred Pounds to the said *A.* at the Time in the said Note for that Purpose limited and appointed; And the said *A.* afterwards, and before the Expiration of the said Month, after the Date of the said Note, and before Payment of the said One hundred Pounds therein mention'd, or any Part thereof, (that is to say) on the 22 Day of the said Month, by another Indorsement in Writing, bearing Date the Day and Year last above mention'd, subscribed with his own Hand, at *London* aforesaid, in the Parish and Ward aforesaid, appointed and directed the said *J. M.* to pay the said One hundred Pounds to the said *C.* at the Time in the said Note for that Purpose limited and appointed; of which several Indorsements afterwards, the said tenth Day of *August*, in the Year last above mention'd, the said *J. M.* had Notice at *London* aforesaid, in the said Parish and Ward. And the said *C. D.* in Fact says, That afterwards, and after the Expi-

Common
Pleas.

Expiration of one Month from the Date of the said Note last mention'd, (that is to say) on the twelfth Day of *September* following; at the Place aforesaid, he the said *C. D.* shew'd the Note, with the several Indorsements above mention'd, thereon made and subscribed, to the said *J. M.* and then and there requested him to pay the said Sum of Money contain'd in the said Note, to the said *C. D.* according to the Tenor and Purport of the same; but he the said *J. M.* then and there refus'd to pay the same; of which the said *A.* afterwards, (that is to say) the Day, Year, and Place last abovementioned, had notice from the said *C.* (and the said Sum of Money mention'd in the said last mention'd Note, or any part thereof, not having been paid either by the said *J. M.* or by the said *S. T.* or by the said *W. L.*) by reason thereof, and by Force of the Statute in that Case made and provided, the said *A.* became liable to pay to him the said *C.* the Sum of Money contain'd in the said Note; and being so liable, the said *A.* afterwards (that is to say) the same Day and Year last above mention'd, at *London* aforesaid, in the said Parish and Ward, undertook, and faithfully promised to pay to the said *C.* the said Sum last mention'd, whenever he should be thereto required. Nevertheless, the said *A.* not regarding his said several Promises and Undertakings, but contriving, and fraudulently intending to deceive and defraud the said *C.* hath not paid him the said several Sums of Money, or any Part thereof; altho' the said *A.* afterwards, (that is to say) the said Day and and Year last above mention'd, and oftentimes afterwards, at *London* aforesaid, in the said Parish and Ward, was by the said *C.* there-
to

to required; but the said *A.* hitherto hath, and still doth refuse so to do, whereby the said *C.* saith, that he is injur'd and damag'd to the Value of five hundred Pounds; and therefore brings his Suit, and hath good Proof of the Premises when the Court will consider thereof.

Common
Pleas.

Morton against Sleddall.

John Sleddall, late of the Parish of St. Margaret's Westminster in the said County, was attach'd to answer to *John Morton* in an Action of Trespass upon the Case. And whereupon the said *John Morton* by *Abel Stibbs* his Attorney complains, that whereas the said *John Sleddall* on the 13th of April, in the Year of our Lord one thousand seven hundred and seventeen, at Westminster in the said County, (he then being a Person trading, merchandizing, and using Commerce, at Westminster aforeaid,) according to the Usage and Custom of Merchants, made his certain Bill of Exchange in Writing, subscribed with his own Hand, bearing Date the same Day and Year, and directed the said Bill of Exchange to *Kingsmill Eyre, Esq;* by which said Bill of Exchange, the said *John Sleddall* required the said *Kingsmill* to pay to one *Thomas Pipon*, or to his Order, the Sum of twenty Pounds, twenty Days after Sight of the said Bill, Value receiv'd, and to place it to the Account of Subsistence, for the Use of Captain *Spicer's* Company of Invalids; which said *Thomas Pipon*, afterwards, (to wit)

Declarati-
on upon a
Bill of Ex-
change a-
gainst the
Drawer,
the Person
upon whom
it was
drawn re-
fusing to ac-
cept it,
Lilly 44.

on

Common
Pleas.

on the 14th Day of *May*, in the said Year of our Lord, at *Westminster* afore said, by his Indorsement upon the same Bill of Exchange, made according to the Usage and Custom of Merchants, order'd the Contents of the said Bill to be paid to one *John Vowler*, or to his Order; which said *John Vowler* afterwards, (to wit) on the 27th Day of *May*, in the Year afore said, at *Westminster* afore said, by his Indorsement upon the same Bill of Exchange made, according to the Usage and Custom of Merchants, ordered the Contents of the same Bill, to be paid to the said *John Morton*, or to his Order: And the said *John Morton* in Fact says, that afterwards, (to wit) on the first Day of *June*, in the Year above said, at *Westminster* afore said, he shewed the said *Kingsmill Eyre* the said Bill, with the said Indorsements thereupon made, and then and there required him to accept the said Bill, which the said *Kingsmill* then and there refused to do, or to pay the said twenty Pounds therein mentioned; of which Premises, the said *John Sleddall* afterwards, (to wit) on the eighth Day of *June*, in the said Year, at *Westminster* afore said, had Notice, by Reason of which Premises, he the said *John Sleddall*, according to the Usage and Custom of Merchants, became, and is chargeable to pay to the said *John Morton* the said twenty Pounds mentioned in the said Bill of Exchange. And the said *John Sleddall*, being so chargeable, afterwards, (to wit) the same Day and Year at *Westminster* afore said, in Consideration thereof, undertook, and to the said *John Morton* then and there faithfully promised, that he the said *John Sleddall*,
would

would well and truly content and pay to the Common
said *John Morton* the said Sum of twenty Pounds. And also whereas the said *John Sleddall*, on the 30th Day of *August*, in the Year aforesaid, was indebted to the said *John Morton*, in Eighty Pounds, for Mouey by the said *John Sleddall* before that Time received, to the Use of the said *John Morton*; and being so indebted, the said *John Sleddall*, the Day and Year last above-mentioned, at *Westminster* aforesaid, in Consideration thereof, undertook, and then and there faithfully promised to the said *John Morton*, that he the said *John Sleddall*, would well and truly content and pay to the said *John Morton*, the said eighty Pounds, whenever after he should be thereto required. Nevertheless the said *John Sleddall* not regarding his said several Promises and Undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *John Morton* in that Behalf, hath not paid the said several Sums of Money, or any Part thereof, to the said *John Morton*, altho' the said *John Sleddall* was thereto required by the said *John Morton* afterwards, (to wit) on the 31st of *August*, in the Year aforesaid, and often after that Time at *Westminster* aforesaid, but the said *John Sleddall* always hitherto hath, and still doth refuse to pay the same, to the Damage of the said *John Morton*, eighty Pounds; for which he brings this Suit, and bath good Proof of the Premisses when the Court will consider thereof.

Common
Pleas.

*A Declaration in Case for scandalous
Words spoken of a Tradesman.*

London. *A. B.* late of *Breadstreet*, in the Parish of *St. Mildred Breadstreet*, London, *Turner*, was attach'd to answer to *C. D.* of a Plea of *Trespass upon the Case, and so forth*: And whereupon the said *C.* by *George Woodcraft* his Attorney complains, that whereas he the said *C.* at *London*, (that is to say) at the Parish of *St. Mary le Bow*, in the Ward of *Cheap*, is a good, true, faithful Subject of our Sovereign Lord the King, and is, and always hitherto hath been of a good Fame, Credit and Reputation, and is, and always hath been reputed as such, as well with, and by his Neighbours, as also with, and by many other Persons of good Substance, and Subjects of our said Sovereign Lord the King, living remote from the said *C.* and whereas the said *C.* now doth, and for several Years last past, hath used and exercised the *Art* or *Mystery* of a *Mercer* at *London*, aforesaid, in the said Parish and Ward, and ever since he hath so used and exercised such *Art*, or *Mystery*, hath got his Livelihood in the Way of Merchandize, by buying and selling such Wares, Merchandizes, and Commodities, as have used to be bought and sold by others exercising the same *Art* and *Mystery*, without any Deceit, or having been at any Time backward in paying his Debts, and without the least Colour or Suspicion of having been a *Bankrupt*, or liable to the several Statutes made concerning *Bankrupts*, or either of them; and by means of

POCKET COMPANION.

47

of having so behaved himself, had got, ob- Common
tained and enjoyed the good Esteem and Opi. Pleas.
nion, as well of his *Neighbours* and *Creditors*,
as of other Persons his Majesty's Subjects,
and Persons of great Worth, Credit and Re-
putation. Nevertheless the said *A.* contriving
unjustly to prejudice, detract, and injure the
said *C.* in such his good Name, Credit, Repu-
tation and Esteem, which he had so gained
and obtained, as well amongst his *Neighbours*
and *Creditors*, as with and among other great
and reputable Persons, *living remote* from the
said *C.* on the 10th Day of *May*, in the Year
of our Lord 1732, at *London* aforesaid, in the
said Parish of *St. Mary le Bow*, in the Ward
of *Cheape*, in the Presence of several of his
said Majesty's Subjects; he the said *A.* maliti-
ously, openly and publicly spoke, pro-
nounced, and published these false, scanda-
lous and malicious *English* Words following,
to and of the said *C.* (that is to say) *thou*,
(meaning the said *C.*) *art a Bankrupt, and a*
Drunkard, and of no Credit. By means of
speaking, pronouncing and publishing, which
false, scandalous and malicious Words, he the
said *C.* is not only greatly hurt and prejudiced
in his good Name, Credit, and Reputation,
but is also much damnified in transacting his
lawful Affairs, in the said Way of buying and
selling such Commodities, as belong to the said
Art and Mystery of a *Mercer*, to the Damage
of the said *C.* five hundred Pounds; and there-
fore he brings this Suit, and hath good Proof
of the Premises, when the Court will consi-
der thereof.

Decla-

The ATTORNEY'S

*A Declaration in Case for scandalous
Words spoken of a Tradesman.*

London. *A. B.* late of *Breadstreet*, in the Parish of *St. Mildred Breadstreet*, London; *Turner*, was attach'd to answer to *C. D.* of a Plea of *Trespasse upon the Case*, and so forth: And whereupon the said *C.* by *George Woodcraft* his Attorney complains, that whereas he the said *C.* at *London*, (that is to say) at the Parish of *St. Mary le Bow*, in the Ward of *Cheap*, is a good, true, faithful Subject of our Sovereign Lord the King, and is, and always hitherto hath been of a good Fame, Credit and Reputation, and is, and always hath been reputed as such, as well with, and by his *Neighbours*, as also with, and by many other Persons of good Substance, and Subjects of our said Sovereign Lord the King, *living remote* from the said *C.* and whereas the said *C.* now doth, and for several Years last past, hath used and exercised the *Art* or *Mystery* of a *Mercer* at *London*, *aforsaid*, in the said Parish and Ward, and ever since he hath so used and exercised such *Art*, or *Mystery*, hath got his Livelihood in the Way of Merchandize, by buying and selling such Wares, Merchandizes, and Commodities, as have used to be bought and sold by others exercising the same *Art* and *Mystery*, without any Deceit, or having been at any Time backward in paying his Debts, and without the least Colour or Suspicion of having been a *Bankrupt*, or liable to the several Statutes made concerning *Bankrupts*, or either of them; and by means of

POCKET COMPANION.

47

of having so behaved himself, had got, ob- Common-
tained and enjoyed the good Esteem and Opi- Pleas.
nion, as well of his *Neighbours* and *Creditors*,
as of other Persons his Majesty's Subjects,
and Persons of great Worth, Credit and Re-
putation. Nevertheless the said *A.* contriving
unjustly to prejudice, detract, and injure the
said *C.* in such his good Name, Credit, Repu-
tation and Esteem, which he had so gained
and obtained, as well amongst his *Neighbours*
and *Creditors*, as with and among other great
and reputable Persons, *living remote* from the
said *C.* on the 10th Day of *May*, in the Year
of our Lord 1732, at *London* aforesaid, in the
said Parish of *St. Mary le Bow*, in the Ward
of *Cheape*, in the Presence of several of his
said Majesty's Subjects; he the said *A.* maliti-
ously, openly and publicly spoke, pro-
nounced, and published these false, scanda-
lous and malicious *English* Words following,
to and of the said *C.* (that is to say) *thou*,
(meaning the said *C.*) *art a Bankrupt, and a*
Drunkard, and of no Credit. By means of
speaking, pronouncing and publishing, which
false, scandalous and malicious Words, he the
said *C.* is not only greatly hurt and prejudiced
in his good Name, Credit, and Reputation,
but is also much damnified in transacting his
lawful Affairs, in the said Way of buying and
selling such Commodities, as belong to the said
Art and *Mystery* of a *Mercer*, to the Damage
of the said *C.* five hundred Pounds; and there-
fore he brings this Suit, and hath good Proof
of the Premises, when the Court will consi-
der thereof.

Decla-

Declarations in Debt.

A Declaration upon an Assignment of a Bail-Bond against the principal Defendant, at the Suit of the Assignee of the Sheriff, by force of the Statute in that Case made and provided.

Suffolk. Thomas Thorpe, late of Stowmarket, in the said County Woollendrapers, was summon'd to answer to William Whitchurch, Gentleman, Assignee of Toby Bloss, Esq; the late Sheriff of the County of Suffolk, according to the Form and Effect of the Statute in such Case made and provided, in an Action, that he render to the said William forty Pounds of lawful Money of Great Britain, which he owes to, and unjustly detains from him; and whereupon the said William, by Thomas Evans his Attorney complains, that whereas on the 12th Day of February, in the Year of our Lord 1728, the said William sued, and prosecuted out of this Court of our Sovereign Lord the King of Common Bench, his said Majesty's Writ, called a *Capias*, against the said Thomas, at the Suit of him the said William, returnable before his said Majesty's Justices of the Common Bench, directed to the then Sheriff of the said County of Suffolk: By which said Writ his said Majesty commanded the Sheriff of Suffolk, that he should take the said Thomas, if he was to be found in his Bailiwick, and safely keep him, so that he

he might have his Body before his said Majesty's Justices at *Westminster*, in *fifteen Days* from the feast Day of *Easter*, to answer to the said *William* in an Action of Trespass; and also to answer to the said *William*, according to the Custom of his said Majesty's Court, in an Action of *Trespass upon the Case* on *Undertakings*, to the Damage of the said *William* forty Pounds, which said Writ afterward, and before the Return thereof, (that is to say) on the 10th Day of *March*, in the said Year of our Lord 1728, at *Stowmarket* in the said County, was delivered to the said *Toby Bloss*, then Sheriff of the said County of *Suffolk*, to be executed in due Form of Law. By Virtue of which said Writ, the said *Toby* afterwards, and before the Return of the said Writ, (that is to say) on the said 10th Day of *March*, in the said Year of our Lord, at *Stowmarket* aforesaid, took and arrested the said *Thomas*; and during the Time the said *Toby* so had the said *Thomas* in his Custody, by Virtue of the said Writ, he the said *Toby*, then and there took Bail for the Appearance of the said *Thomas*, at the Return of the said Writ, (that is to say) the said *Thomas* himself, and *Joseph Selgood* of *Stowmarket* aforesaid, *Chapman*, and *Timothy Trueman* of the same Place *Schoemaker*; and the said *Thomas* did on the same 10th Day of *March*, in the said Year of our Lord, by his *Writing Obligatory*, commonly call'd a *Bail-Bond*, permit himself to be bound to the said *Toby*, by the Name of *Toby Bloss*, Sheriff of the County of *Suffolk*, in the said Sum of forty Pounds, to be paid to the said Sheriff or his *Assigns*, whenever

D

after

Common
Pleas.

after he the said *Thomas* should be thereto required, with a *Condition* there under written; that if the said *Thomas* should appear before his said Majesty's Justices at *Westminster*, in *fifteen Days from the Feast-Day of Easter* then next following, to answer to the said *William* in an Action of *Trespas*, and also in an Action of *Trespas on the Case* on Undertakings, to the Damage of the said *William* forty Pounds, that then the said *Writing Obligatory* should be Void, and of none Effect, or else should be and remain in full Force, Power and Virtue, as by the said *Writing Obligatory* and *Condition* there under written, Relation being thereunto had, may more fully and at large appear. And the said *William* in Fact declares, that the said *Thomas* did not appear before his said Majesty's Justices at *Westminster*, within the said *fifteen Days from the said Feast-Day of Easter*, mentioned in the said *Condition*, according to the Form and Effect of the said *Condition*, whereby the said Bond became forfeited to the said *Toby Bloss*, as Sheriff of the said County. And the same being so forfeited, he the said *Toby* afterwards, (that is to say) on the 20th Day of *April*, in the said Year of our Lord, at *Stowmarket* aforesaid, (at the Request of the said *William*, Plaintiff in that Suit) by his Indorsement in Writing upon the said Bond, in the Presence of two credible Witnesses, (that is to say) *Burrell Keeble* and *William Chaplyn*, assign'd the said Bond to the said *William*, according to the Form of the Statute in such Case made and provided, of which said Indorsement the said *Thomas* afterwards, on the said 20th Day
of

of *April* had Notice, (that is to say) at *Stow-* Common
market, in the said County. By reason of Pleas.
 which Premises, and by Force of the Statute
 in such Case made and provided, an Action
 accrued to the said *William*, as Assignee to the
 said *Toby Bloss*, Sheriff of the said County of
Suffolk, to require, and have from the said
Thomas, the said Sum of forty Pounds. Ne-
 vertheless the said *Thomas* although often re-
 quired, hath not paid the said Sum of forty
 Pounds, either to the said *Toby Bloss*, or to
 the said *William*, but hitherto always hath,
 and still doth refuse to pay the said Sum to
 the said *William*, to the Damage of the said
William ten Pounds; and therefore he brings
 his Suit, and hath good Proof of the Premis-
 ses, when the Court will consider thereof;
 and the said *William* brings here into this
 Court the said *Writing Obligatory*, together
 with the said Indorsement made thereon as
 above, the respective Dates whereof are the
 same Days and Years above for that Purpose
 respectively mentioned.

A Declaration in Debt upon a Bond.

Devonshire ff. *A. B.* late of *Southmalton*, in
 the County of *Devon*, *Mercer*, otherwise
 called *A. B.* of *Southmalton*, in the County of
Devon, *Mercer*, was summon'd to answer to
C. D. of a *Plea* (or in an *Action*) that he render
 to him twenty Pounds of lawful Money of
Great Britain, which he owes to, and unjustly
 detains from him, &c. And whereupon the said
C. by *Thomas Lyte* his Attorney, complains,
 that whereas on the first Day of *March*, in

Common
Pleas.

the Year of our Lord 1722, at Tiverton, in the said County, the said A. by his *Writing Obligatory*, (commonly called a Bond) suffer'd himself to be bound to the said C. in the said Sum of twenty Pounds of lawful Money of Great Britain, to be paid to the said C. whenever after the said A. should be thereto required. *Nevertheless* the said A. (altho' often required) hath not paid to the said C. the said Sum of twenty Pounds, or any Part thereof, but hitherto altogether hath, and still doth refuse to pay the same, to the Damage of the said C. ten Pounds; and thereupon he brings his Suit, and hath good Proof of the Premises when the Court will consider thereof: And he brings into this Court the said *Writing Obligatory*, which gives sufficient Testimony of the said Debt, the Date whereof is the Day and Year above mentioned.

Note; there have been several Ways of declaring upon Bonds; some using the Words that the Defendant *Obligavit se in penali summa*; the Form in the King's Bench generally made Use of is, that the Defendant (*Cognovit se teneri & firmiter Obligari*) but the usual Course in the Common Pleas hath been to make use of the Words *concessit se teneri*, which I have very good Authority from *Littleton's Dict.* to translate in the manner as above; for in his giving an *English* Translation to this Word he says *Concedo generale verbum est unde vim accipit a natura contractus cui adjun-*

POCKET COMPANION.

53

adjungitur, & concedere pro permittere temporarium est, cedere perpetuum. Common-Pleas.

A Declaration in an Action of Debt, upon a Bond brought by the surviving Obligor.

Suffolk. H. A. B. late of Ipswich, in the County of Suffolk, Mariner, (otherwise called A. B. de Gippo in Comitatu Suffolciæ Nautam) was summon'd to answer to C. D. of a Plea, (or in an Action) that he render to the said C. fifty Pounds, which he owes to, and unjustly detains from him. And whereupon the said C. by Robert Hamby his Attorney complains, that whereas the said A. on the first Day of July, in the Year of our Lord 1732, at Ipswich aforesaid, by his Writing Obligatory, (commonly called a Bond) permitted himself to be bound to the said C. and to one D. now deceased, (whom the said C. survived) in the said Sum of fifty Pounds, to be paid to the said C. and D. or to one of them, whenever after the said A. should be thereto required. Nevertheless the said A. altho' often required, hath not paid the said Sum of fifty Pounds to the said C. and D. or either of them, in the Life-time of the said D. or to the said C. after his Decease, but hath always refused Payment of the same to the said C. and D. in his Life-time, and now doth refuse Payment of the same to the said C. wherefore the said C. declares he is injured and endamaged to the Value of twenty Pounds; and thereupon he brings his Suit, and hath good Proof of the

Common
Pleas.

Premises when the Court will consider thereof: And the said C. brings here into this Court the said *Writing Obligatory*, which testifies the said Debt; the Date of which is the same Day and Year above-mentioned.

A Declaration upon a Bond, in an Action brought by Husband and Wife, as Co-Executrix of the last Will and Testament of the Obligee, and the other Co-executrix against the Heir of the Obligor.

Devonshire. ff. A.B. late of Southmolton, in the County of Devon, Gent. Son and Heir to C. B. otherwise called C. B. of Southmolton, in the County of Devon, Gent. was summon'd to answer to D. E. and S. his Wife, Executrix of the last Will and Testament of F. G. and to H. J. Co-executrix with the said S. of the said last Will and Testament of the said F. in an Action, that he render to them one hundred Pounds, which he unjustly detains from them, &c. And whereupon the said D. E. and S. his Wife, and the said S. by John Cock their Attorney complain, that whereas the said C. (whose Heir the said A. now is) in his Life-time, (that is to say) on the first Day of June, in the Year of our Lord 1732, by a certain *Writing Obligatory*, (commonly call'd a Bond) suffer'd himself to be bound to the said F. in the said Sum of one hundred Pounds, to be paid to the said F. in his Life-time, whenever after he the said C. should be thereto required. And in order to make a due Payment of the said one hundred Pounds,

Pounds, the said *C.* by the same *Writing Obligatory*, bound himself and his Heirs. *Never- theless* the said *C.* in his Life-time, or the said *A.* Son and Heir to the said *C.* after his Decease, altho' often required, have not, nor either of them hath paid the said Sum of one hundred Pounds, or any Part thereof, either to the said *F.* in his Life-time, or to the said *S.* and *H.* or either of them, after the Decease of the said *F.* and before the *Espousals* celebrated between them the said *D.* and *S.* or to the said *D. S.* and *H.* after the said *Espousals* celebrated between the said *D.* and *S.* but the said *C.* in his Life-time, and the said *A.* after his Decease, have hitherto refused to pay them, or either of them, the said one hundred Pounds: Whereupon the said *D. S.* and *H.* say, they are injured and endamaged to the Value of twenty Pounds, and in Delay of the Execution of the said last Will and Testament of the said *F.* and thereupon they bring their Suit, &c. And they the said *D. S.* and *H.* bring into this Court as well the said *Writing Obligatory*, which gives a sufficient Testimony of the said Debt, the Date whereof is the Day and Year above-mentioned; as also the *Letters Testamentary*, by which it may sufficiently appear, that they the said *S.* and *H.* are Executrixes of the said last Will and Testament of the said *F.* and therefore have the *Administration* of all and singular the Goods and Chattles, Rights and Credits of the said *F.* at the Time of his Death; the Date whereof is the same Day and Year for that Purpose above-mentioned.

Common
Pleas.

A Declaration in an Action of Debt for Rent, upon a Lease Parol laid two several Ways.

Norfolk. A. B. late of Thetford, in the County of Norfolk, Yeoman, was summon'd to answer to C. D. in an Action, that he render to him forty Pounds of lawful Money of Great Britain, which he owes to, and unjustly detains from him, &c. And whereupon the said C. by Robert Martin his Attorney complains, that whereas the said C. on the 20th Day of March, in the Year of our Lord 1731, at Thetford aforesaid, did demise, and to Farm let to the said A. one Messuage, one Garden, ten Acres of Land, ten Acres of Meadow, and ten Acres of Pasture, with the Appurtenances situate, lying and being in the Parish of Shipdham, in the said County, for him the said A. and his Assigns, to have and occupy the said Tenements, with the Appurtenances, from the Feast of the Annunciation of the Blessed Virgin Mary then next following, unto the full End and Term of one whole Year, from thence next Ensuing, and fully to be compleat, and ended; and so from Year to Year, as long as both Parties should please, yielding and paying therefore to the said C. yearly, and every Year so long as the said A. should have and occupy the said Tenements, with the Appurtenances, by Virtue of the said Demise, the Yearly Rent or Sum of forty Pounds of lawful Money of Great Britain, at the four most usual Feasts or Days of Payment in the Year, (that is to say) on the

POCKET COMPANION.

57

the Feasts of the *Annunciation of the Blessed Common*
Virgin Mary, St. John the Baptist, St. Mi- Pleas.
chael the Archangel, and the Birth of our Lord
Christ, in every Year, by even and equal
Portions; the first Payment thereof to begin,
and be made on the Feast of *St. John the*
Baptist then next ensuing. By Virtue of
which said Demise, the said *A.* entered into
the said Tenements, with the Appurtenances
to him demised, in the Manner as above set
forth, and had held, and occupied the same,
until the Feast of the *Annunciation of the*
Blessed Virgin Mary, in the Year of our Lord
1732, and the Sum of twenty Pounds, (Part
of the above-mentioned forty Pounds) was
due at the said Feast of the *Annunciation of*
the Blessed Virgin Mary, in the said Year of
our Lord 1732, and still is in Arrear, for Half
a Year's Rent, of the said annual Rent for the
said Tenements, with the Appurtenances, and
the same is yet unpaid to the said *C.* whereby
an Action accrued to the said *C.* to require, and
have of the said *A.* the said Sum of twenty
Pounds, part of the said forty Pounds above-
mentioned. And whereas also the said *C.* af-
terwards, (that is to say) on the 25th Day of
March, in the Year of our Lord 1731, at
Thetford aforesaid, demised, and to farm
let to the said *A.* one other *Messuage*, one
other *Garden*, ten other *Acres of Land*, ten
other *Acres of Meadow*, and ten other *Acres*
of *Pasture*, with the Appurtenances situate,
lying and being in the said Parish of *Shipd-*
ham, in the said County of *Norfolk*, for him
the said *A.* and his Assigns, to have and occu-
py the same, unto the full End and Term of

D. 5

one

Common
Pleas.

one whole Year, from thence next ensuing, and fully to be compleat and ended; and after the Expiration of the said one whole Year, as long as both Parties should please, *yielding and paying* to the said C. therefore yearly, and every Year so long as the said A. should have and occupy the said *Tenements with the Appurtenances*, at and according to the Rate of forty Pounds a Year. By Virtue of which said Demise last mentioned, the said A. enter'd into the said last mention'd *Tenements, with the Appurtenances*, and held and occupied the same, until the 25th Day of *March* in the Year of our Lord one Thousand seven Hundred and Thirty-two, and the Sum of twenty Pounds, (Residue of the above-mentioned *forty Pounds*) was due on the said *Twenty fifth* Day of *March*, in the said Year of our Lord one Thousand seven Hundred and thirty two, and still is in arrear, for Half a Year's Rent for the said *Tenements with the Appurtenances*, last mentioned to have been demised, and yet is unpaid to the said C. whereby an Action accrued to him the said C. to require and have of the said A. the said last mentioned twenty Pounds, Residue of the said forty Pounds. *Nevertheless* the said A. although often required, hath not render'd to the said C. the said several Sums of twenty Pounds and twenty Pounds, or any Part thereof; but hath altogether hitherto denied, and still doth deny the Payment of the same, to the Damage of the said C. ten Pounds; and therefore he brings this Suit, &c.

A De.

A Declaration upon a Recognizance, upon a Habeas Corpus after Judgment in the Common Pleas, affirmed in the King's Bench upon Writ of Error.

Trinity the eleventh of King GEORGE.

Middlesex. Robert White late of Hatton Garden, in the said County, Taylor, was summoned to answer to Thomas Wilkins, of a Plea, or in an Action, that he render to him fifteen Pounds, which he owes to, and unjustly detains from him. And whereupon the said Thomas, by George Wheeler his Attorney, declares, That whereas the said Robert, otherwise called Robert White of Hatton Garden in the County of Middlesex, Taylor, on the twentieth Day of January, in the Year of our Lord one Thousand seven Hundred and twenty, came before Robert Tracy, Esq; one of his Majesty's Justices of the Common Bench, at his Chambers situate in Serjeants-Inn in Fleet-street, in his proper Person, and became Bail for John Bayley in the Sum of fifteen Pounds, that the said John Bayley should appear in his proper Person, in his said Majesty's Court of Common Bench, (that is to say) at Westminster; or by his Attorney sufficient in Law, to an Original Writ, at the suit of the said Thomas, of a Plea (or in an Action) of Trespass on the Case, to the Damage of the said Thomas fifteen Pounds, to be sued out and prosecuted by the said Thomas against the said John, in this same Court, before the Morrow of the Ascension Day

Common
Pleas.

Day then next following, and to answer to the said *Thomas* in the same *Action*: And also that if it should happen, *Judgment* should be given in the same Court, for the said *Thomas*, against the said *John*, in the said *Action*, that then the said *John* should make Satisfaction to the said *Thomas* for the Damages that should be recovered by, and awarded for the said *Thomas*, against the said *John* in the said *Action*; or that he the said *John* should on that Occasion render his Body to his Majesty's Prison of the Fleet; which said Sum of *fifteen Pounds*, acknowledged to the said *Thomas* in the manner as above, he the said *Robert* willed and granted to be made of, and levied upon, the Lands and Chattels of the said *Robert*, to the Use and Behoof of the said *Thomas*, if it should happen that Default should be made by the said *John* in any of the Premises, and he should be in a legal Manner convicted thereof; which said *Recognizance*, taken and acknowledged as above, before the said *Justice*; the said *Justice* afterwards, (that is to say) on the *Twenty-third* Day of *January* in the *sixth* Year of the Reign of his said present Majesty, delivered here into this Court with his own Hands, to be enrolled here in this Court of Record, and then and there the same was enrolled of Record in this Court, of the Term of *St. Hillary* in the said Year, before *Sir Peter King, Knight*, and his Companions, his said Majesty's Justices of this Court of Common Bench at *Westminster*, as by the Record thereof now remaining here in this his said Majesty's Court, before his said Majesty's Justices at *West-*

Westminster, more plainly may appear: In Common-
 which Action of *Trespass upon the Case*, a Pleas-
 certain *Plaint* had been before that Time
 levied in his said Majesty's Court, before
A. B. then being one of the Sheriffs of *Lon-*
don; and the same *Plaint* was, by the Com-
 mand of his said Majesty by his Writ, sent and
 transmitted hither at *Westminster*, as by the
 Record thereof now likewise remaining here
 in this his said Majesty's Court at *Westminster*
 may appear. And the said *Thomas* by the
 Name of *Thomas Wilkins*, afterwards, and
 before the said *Morrow of the Ascension of our*
Lord next following, the said Twenty-third
 Day of *January*, in the said Year of our Lord
 one Thousand seven Hundred and Twenty,
 (that is to say) on the tenth Day of *February*
 in the said Year, sued out an Original against
 the said *John*, by the Name of *John Bayley*,
 late of *London*, Gentleman, out of his Maje-
 sty's high Court of Chancery, the same then
 being at *Westminster*, in the said Action of
Trespass upon the Case, to the Damage of the
 said *Thomas* fifteen Pounds, directed to the
 then Sheriffs of *London* for the Time being,
 returnable (and afterwards returned) at *West-*
minster, before his said Majesty's Justices of
 this Court, in fifteen Days from the Feast-
 Day of *Easter*, to which said Original, the
 said *John* appeared by *Newton Stagg* his At-
 torney, according to the Tenour of the said
Recognizance. And also, altho' the said *Tho-*
mas afterwards, (that is to say) in *Easter*
Term, in the said sixth Year of the Reign of
 his said present Majesty, in this his said Ma-
 jesty's Court, before Sir *Peter King*, Knight,
 and

Common
Pleas.

and his Companions, then his said Majesty's Justices of the said *Common Bench*, recovered in the said *Action* against the said *John*, *Twenty-four Pounds*, which were awarded to the said *Thomas* here in this his said Majesty's Court of *Common Bench* at *Westminster*, for his Damages which he sustained, as well by Reason of the said *Trespass upon the Case*, committed by the said *John* against the said *Thomas* as above-mentioned, as for his Expences and Costs, laid out by him about his Suit in that Behalf, whereof the said *John* is convicted, as by the Record and Proceedings thereof, (which our said Sovereign Lord the King, by Virtue of his said Majesty's Writ for *correcting Errors*, sued out by the said *John* of and upon the Premises, caused to be brought before himself, and which is now remaining in his said Majesty's Court before the King himself, in all Things affirmed) may more fully and at large appear; which said *John Bayley*, mentioned in the said *Recognizance*, and the said *John Bayley* mentioned in the said *Plaint, Original, and Judgment* thereupon had, as above, are one and the same and not different Persons; and the said *Thomas Wilkins*, mentioned in the said *Recognizance*, and the said *Thomas Wilkins* mentioned in the said *Plaint, Original and Judgment*, are one and the same, and not different Persons. *Nevertheless* the said *John* hath not made Satisfaction to the said *Thomas* for the said Damages, nor rendered his Body to his Majesty's *Prison of the Fleet*, according to the Form of the said *Recognizance*, whereby an *Action* accrues to the said *Thomas* to require and have of

of the said *Robert* the said *fifteen Pounds*, by Common Pleas. him acknowledged in the Manner as above, according to the Force, Form and Effect of the said *Recognizance*. Nevertheless the said *Robert*, altho' often required, hath not paid the said *fifteen Pounds*, or any Part thereof, to the said *Thomas*; but hitherto altogether hath, and still doth refuse to pay the same; whereby the said *Thomas declares*, that he is injured and endamaged to the Value of *twenty Pounds*, and therefore he brings his Suit, &c.

Of Pleas.

Before I insert Precedents of *Pleas*, I shall here just give a little Sketch of the Introductive Part of a *Plea*, and then insert a few Instances only of *Pleas in Abatement*; for were I to mention more, it would not answer the End for which this Treatise is designed, which is only to be a *small Pocket Book*.

And first, it must be understood, that the Tenour of the Writ is to compel the Defendant's *Appearance* at the *Return* of the *Process*, and defend the Charge that the Plaintiff shall then lay against him; at which Time every *Defendant*, either in Person or by Attorney, did in ancient Times appear and plead what they had in their Defence *Ore tenus*; that is, they related the Substance of their Defence at the Bar,

Common
Pleas.

Bar, if it was any special Matter, then their *Counsel* spoke at the Bar the Subject Matter of their Clients *Defence*; and the *Plaintiff's* Counsel did likewise *ore tenus* maintain their Client's *Charge* by way of *Replication*, and so on to the rest of the *Pleadings*; and the *Entering Clerks* were then the proper Persons who enter'd what had been so pleaded; and if upon opening the Court, the Court saw plainly that the Plaintiff had no Title to maintain his Writ, then the Judges *ex Officio* abated it; and my Lord Chief Justice *Vaughan* hath taken Notice of one or two Instances of that Nature. One was where a Man brought an *Action of Debt* against another, and counted that he sold certain Goods to the Defendant's *Testator* for the Sum in Demand; *Littleton* the Judge, caused the Attorney for the Defendant to be demanded, and so he was, and *Littleton* demanded of him if he would avoid the Suit? who answered, *Yes*; then *Littleton* turned about to the Plaintiff's Attorney, and said, *The Court awards that you take nothing by the Writ, for know, (says he) that a Man shall not have an Action against Executors, where the Testator might have waged his Law. And then says Brook, Note, this is a Judgment ex Officio.*

It

It is said that *Brook*, in abridging the Common
Pleas. Case, mistook the Plaintiff for the Defendant, and the Word avow for avoid; *Vaughan* 98.

Pleas to the Plaintiff's Declaration must be either *Dilatory* or in *Bar*.

A *Dilatory* Plea is an Exception alledged and made good in Law, and is as much as *Exceptio dilatoria* with the Civilians. *Briton*, C. 52. See *Brañton Tractatus quintus*, Title *de Exceptionibus*.

Where the Defendant waves the Matter, or says nothing, or nothing to the Purpose, there the Judgment is peremptory for the Plaintiff, and is entered either in this Manner, (that is to say) that the Defendant cannot deny the said Action of the Plaintiff, nor but that he owes him so much Money.

Or otherwise it is thus, when the Defendant's Attorney comes into Court to defend the Force, Injury, and the Damages, &c. he is supposed to be called upon by the Court for his Client's Defence; and then if he says to the Court, that he is not instructed by his Client to make any Defence to the Plaintiff's Action, whereby the Plaintiff remains undefended by the Defendant; the Court awards the Plaintiff a Recovery of his Debt or Damages, as the Case is.

Common
Pleas.

If the Defendant pleads, the true Order of pleading is to plead, 1st. to the Jurisdiction of the Court. 2. In *Disability* of the Person of the Plaintiff. 3. to the Count. 4. to the Writ. And 5. to the Action.

In order to plead after the Count, the Defendant is to be assisted with *Oyer*, if he demands it, of every Thing which is not Parcel of the *Record*; and it hath been said, that in *Pleas* after the Count, even tho' in Abatement, he ought to make a full *Defence* of the *Wrong*, *Injury*, and *Damages*; but I make a Doubt whether that be Law; however, I am sure the safest Way is to plead always in Abatement, thus;

And the Defendant, by (such a one) his Attorney comes and defends the Force and Injury; and then go on with the Plea.

But in Pleas to a *Scire facias*, there it is best to plead in this Manner.

And the said Defendant comes and prays Judgment of the said Writ.

Because a *Scire facias* is no positive Charge of a Wrong or Injury, but a Method of bringing him into Court to shew Cause why *Execution* should not be awarded for the Plaintiff.

But in every Plea, except to a *Scire facias*, it is necessary, as my Lord Coke says in his *Institutes*, 127. that the Defendant should

should come and defend the Force and Injury laid to his Charge, to make him a Party to the Matter in Variance, that is to such a Charge; which the Plaintiff has given Pledges that he will maintain against him, now in a *Scire facias*, the Defendant is not in Law a Party to the Suit till he appears, nor is there any Charge of Wrong or Injury against him.

Common
Pleas.

But if it should be objected to me, that where a *Scire facias* is sued out upon a Judgment, *post Annum & Diem*, there the Defendant is a Party to the Suit, and there was a Wrong, and Force, and Injury charged upon him: My Answer is, It must be considered, that no *Scire facias* lay in Personal Actions at Common Law, but was given by the Statute of *W. 2. cap. 45.* in lieu of a *New Original* upon the Judgment; and therefore the Parties to the Action and Judgment are at Common Law out of Court, and the Courts of Common Law would take no Notice of such Judgment before that Statute, till the Plaintiff had brought the Defendant into Court by a new Original, and compelled him to appear thereto; therefore as to any Suit, the Defendant by the *Scire facias* is not a Party till he appears, and when he appears, he may plead by *venit & dicit* only.

I can-

Common
Pleas.

I cannot here be so extensive upon this Head as I would, and therefore shall only lay down a few Observations that I have made, and which are most necessary to be inserted under this Head.

These *Pleas* in *Abatement* are but little favoured because they are always in *dilatione celeris Justitia*, and therefore they are not to be received unless they come into Court within the first four Days within the Term, of which the Writ is returnable, and are never to be pleaded after a *General Impar lance*.

Unless the Substance of the Plea be, that the Land is *ancient Demesne*, which is to be received after an *Impar lance*. And the Reason thereof is, because if the Court gives *Judgment* against the *Defendant*, the Lord may reverse it by an *Action of Disceit*, and the Courts of Law will never give *Judgments* that are liable to be avoided, if they can help it. *Latch* 83.

But if a Defendant enters a *special Impar lance* with the Prothonotary, and pays two Shillings for the same, he may plead a Plea in *Abatement* at any Time within two Terms, before the Rule, which the Plaintiff's Attorney hath given for that Purpose, is expired.

But now *Impar lances* by the foregoing Rule are taken away, in all Cases within
that

that Rule, and dilatory Pleas are so much Common Pleas. discouraged, that in Personal Actions you cannot have Oyer of an *Original* without moving the Court for it, and shewing that you want it upon some better Foundation than to delay the Plaintiff; whereas heretofore the Defendant was not obliged to plead till he had Oyer; indeed in the *King's Bench* they still retain the old Method of making the *Plaintiff's* Attorney give the Defendant *Oyer* before he is obliged to plead; but it is otherwise in the Common Pleas; That Court esteeming it much better and more beneficial for the Suitor, that he should have a speedy *Judgment*. But some have said that *Imparlan-ces* and *Oyer*, are natural Rights which every Subject of *England* is born to, and therefore should not be taken from them, nor should they be any ways obstructed in the Enjoyment of them; and to corroborate their Assertion, they quote a Case in 3 *Salk.* 186. *Ellis and Thomas*, where my Lord Chief Justice *Holt* said, that the want of an *Imparlan-ces* where it appears the Defendant ought to have had it, is Error; and another Case in *Cumberb.* 13. of *Cook and Williams*, where it was likewise said by the then Chief Justice, that the want of an *Imparlan-ces*, if pray'd, is Error; I sub-

Common
Pleas.

submit these Considerations to the Learned; it is sufficient for our Purpose to take Notice where Imparlanes are taken away.

By the Act of the 4th and 5th of Queen Anne, commonly called, *the Act for the Amendment of the Law*, these Pleas are not to be received, unless the Defendant makes an Affidavit of the Truth of his Plea, or shews some probable Matter to the Court to induce them to believe the Fact of such dilatory Plea is true.

Therefore Matter of Record in the same Court requires no Affidavit, and the Reason thereof arises from the foregoing Words of the Act, viz. (*or shews some probable Matter to the Court to induce them to believe that the Fact of such dilatory Plea is true*). And nothing can more induce the Court to believe a Fact to be true, than when it appears of Record. *Modern Cases* 43.

Abatement by the Death of one of the Plaintiffs or Defendants is aided by the Statute of the 8th and 9th of William and Mary, and for an Entry for that Purpose see hereafter.

No Advantage can be taken to a bad Declaration upon a Demurrer to a dilatory Plea. *Carthew* 170.

'Tis said that one may plead in *Abatement* of the Declaration where it is by

Ori-

Original; but if the Action be by Bill, you must plead in Abatement of the Bill only. Common Pleas.

5 *Mod.* 144.

A Writ of Error depending is said to be no good Plea in Abatement to an Action of Debt upon a Judgment. But *contra* in *Sho.* 146.

But 'tis said that a Writ of Error depending in the *Exchequer Chamber*, is a good Plea in Abatement to an Action of Debt upon a Judgment in the *King's Bench*. 5. *Mod.* 68.

The *Bail* cannot plead *Misnomer* of the Principal in Abatement, *Mod. Cas.* 289. nor shall one Partner plead the *Misnomer* of his Companion. *Lut.* 36.

In a *Replication* to a Plea in Abatement where Matter of *Fact* is pleaded, the Plaintiff must pray his *Damages*; because if upon an Issue a *Verdict* be found for him, he shall have final Judgment; but where a *Demurrer* is pleaded, the Plaintiff need only maintain his *Writ*, because if there is a *Demurrer*, the Judgment is only *quod respondeat oster*. *Latch* 374. *Telv.* 112.

After a Plea in Chief you shall never be at Liberty to plead in Abatement. *Latch* 153.

Duplicity in Abatement is ill, as well as in Bar; therefore two Outlawries pleaded make the Plea ill. 2 *Show.* 80.

Where

Common
Pleas.

Where the Defendant concludes his Plea in *Abatement*, and the Plaintiff *demurs*, as to a Plea in Bar, all is discontinued. *Carthew* 138. 1 *Show.* 155.

What might have been pleaded in *Abatement* can never be assigned for *Error*, *Carthew* 124. nor pleaded to a *Scire facias* upon the *Judgment.* 1 *Salk.* 2.

Care must be taken where there is a Plea in *Abatement*, and afterwards a *Respondeas ouster* awarded, that Notice be taken of it on the *Plea-Roll*, on which you enter your Verdict, or the Plaintiff can never have his *Judgment.* *Carthew* 499. and because you shall not be at a Loss for such an Entry, I have inserted one hereafter, *viz.*

The Entry of a Judgment on a Respondeas Ouster awarded.

At which Day as well the said (Plaintiff) as the said Defendant came in their proper Persons, and hereupon all and singular the Premises being viewed, and well understood by the Justices of this Court, It appeareth to the said Justices here, that the said Plea of the said (Defendant) is insufficient to quash the said original Writ of the said Plaintiff. Therefore it is considered and adjudged by this Court that the said (Defendant) do make a further Answer to the said original Writ of the said (Plaintiff) and thereupon the said (Defen-

(Defendant) comes and defends the Force, In- Common
jury and Damages, and whatever else he ought Pleas.
to defend, where and when this Court will
consider thereof; and saith, *Et. (and then go
on with your Plea, and the rest of your Pro-
ceedings.)*

Pleas in Abatement.

*A Plea of Privilege by an Attorney of the
Common Pleas, pleaded to an Action
brought in the King's Bench.*

And the said J. C. in his proper Person,
comes and defends the Force and Injury laid
to his Charge, and saith, That long before
the Exhibiting the Bill of the said Dorothy,
he was, and continually afterwards hath been,
and now is, an Attorney of his present Maje-
sty's Court of Common Bench at Westminster,
as by his said Majesty's Writ of Privilege to
this Plea annexed, * under the Seal of the said * Note,
Court of Common Bench, may appear; and where you
that he is prosecuting and defending divers plead Pri-
Suits, Pleas and Affairs, of divers liege People vilege in
and Subjects of his present Majesty in the another
same Court of Common Bench, as their Attor. Court than
ney. And the said J. saith, That he and all where the
other Attornies of the same Court of Common Privilege
Bench, by a laudable and ancient Custom, arises from,
and according to the Laws of this Kingdom, you must
and the Liberties and Privileges of the said Sub pede
Court of Common Bench, Time out of Mind Sigilli,
used and approved of, ought not to be drawn as in this
E or Precedent,

Common
Pleas.

or compelled to answer before any Justices or other Officers of our said Sovereign Lord the King, or other Judges whatsoever in any Court, except before the Justices of the said Court of *Common Bench* of our said Sovereign Lord the King, at *Westminster*, on any Pleas or Complaints, (*Pleas relating to Freeholds, Felonies and Appeals only excepted*) and this he is ready to verify. Wherefore he prays Judgment, whether he ought to be compelled to answer to the said Bill of the said *Declarat* by, in the said Action, &c.

A Plea that the Plaintiff is outlawed.

And the said *A.* by *John Cook* his Attorney, comes and defends the Force and Injury laid to his Charge, and saith, that he ought not to be compelled to make Answer to the said Declaration of the said *C.* because he the said *A.* saith, that *heretofore* (that is to say) in *Michaelmas Term*, in the *Sixth Year* of the Reign of his present Majesty, one *G. H.* impleaded the said *C.* by the Name of *C. D.* late of *Bread-street, London*, in his Majesty's Court of *Common Pleas*, in an Action of *Debt*. And he the said *C.* forasmuch as he did not come into the said Court of *Common Pleas*, to answer to the said *G. H.* in the said Action, according to the Laws and Customs of this Kingdom, was put in *Exigent* to be outlawed in *London*: And on that Occasion afterwards, (that is to say) on *Monday* next after the Feast of *St. Mark the Evangelist*, in the said sixth Year of the Reign of his present Majesty,

jeſty, the ſaid C. was duly outlawed, as by Common the Record and Proceedings thereof now remaining in this his ſaid preſent Maſteſty's Court of *Common Pleas* at *Weſtminſter*, may plainly appear; which ſaid *Outlawry*, ſo as aforeſaid, had and pronounced againſt the ſaid C. is, and yet remains in its full Force, unreverſed and diſannulled; and the ſaid A. in Faſt ſaith, that the ſaid C. D. mentioned in the ſaid *Outlawry*, and the ſaid C. D. mentioned in the ſaid *Original Writ*, are one and the ſame, and not different Perſons; and this he is ready to verify. Wherefore he prays *Judgment* whether he ought to make Answer to the ſaid *Declaration* of the ſaid C. he the ſaid C. being outlawed, as above, until the ſaid *Outlawry* be reverſed, &c.

A Plea of Miſpriſion of Commorancy.

And the ſaid *Alexander*, by *Robert Martin* his Attorney, comes and defends the Force and Injury above laid to his Charge, and prays *Judgment* of the ſaid *Writ*, becauſe he ſaith that he now doth, and at the Day of ſuing out the ſaid *original Writ* of the ſaid C. did, and for many Years before had, and ever ſince hath inhabited and dwelt in the Pariſh of *St. Dunſtons in the Weſt*, in the Ward of *Farringdon without*, *London*; *Without That*, that the ſaid A. at the Day of ſuing out the ſaid *original Writ* of the ſaid C. did, or at any Time before had, or at any Time ſince hath inhabited and dwelt in the ſaid Pariſh of *St. Clements Danes*, in the ſaid County of *Middleſex*, as the ſaid C. does above ſuppoſe by his

Common
Pleas.

said *Writ*, and this he is ready to verify. Wherefore he prays *Judgment* of the said *Writ*, and that the same may be quashed, &c.

The Statute of Additions pleaded.

And the said *J.* by *W. S.* his Attorney, comes and defends the Force and Injury laid to his Charge, and prays *Judgment* of the said *Writ*; because he saith that by Virtue of the *Statute of Additions* in Writs in which Process of *Outlawry* lieth, the Addition of the Vill, Hamlet, Place and County of the Commorancy of the said *J.* ought to be contained in the said *original Writ* of the said *J.* and this he is ready to verify. Wherefore, inasmuch as such Addition is not contained in the said *Writ*, (wherein Process of *Outlawry* lieth,) the said *J.* prays *Judgment* of the said *Writ*, and that the same may be quashed, &c.

A Plea of Misnomer of the Defendant in his Sirname.

Robert Sims, who was arrested by the Name of *Robert Symonds*, by *J. L.* his Attorney, comes and defends the Force and Injury above laid to his Charge, and prays *Judgment* of the said *Writ*, because he saith that he is the same Person whom the said *T.* hath impleaded by the Name of *Robert Symonds*; and that he now is, and at the Time of suing out the said *original Writ* of the said *T.* was, and ever since his Nativity hath been called

called and known by the Name of *Robert Common Syme*, that is to say at *London* afore said, in Pleas: 1 the said Parish and Ward. *Without that*, That he is, or at the Time of suing out the said *Original Writ* of the said T. was, or at any Time before or since, hath been called or known by the said Name of *Robert Symonds*, as the said T. by his said *Writ* doth above suppose; and this he is ready to verify: Wherefore he prays *Judgment* of the said *Writ*, and that the same may be quashed, &c.

For Misnomer in his Name of Baptism.

And *William Robins*, who was by the Sheriff of *Norfolk* taken and arrested by the Name of *Robert Robins*, by *Robert Martin* his Attorney, comes and defends the Force and Injury above laid to his Charge; and saith, that he ought not to be compelled to make Answer to the said *Writ*, because he saith that he is not, nor can be supposed, to be the same Person against whom the said A. hath brought his said *Writ*; because he saith that he the said *William* was baptized by the Name of *William*; and that at the Time of the said A.'s suing out the said *original Writ*, he was, and always before and since, hath been, and now is called and known by the said Name of *William Robins*, (that is to say) at *Thetford* afore said, in the said County of *Norfolk*: *Without that*, That he at the Time of the said A.'s suing out his said *original Writ*, or at any Time before or since hath been, or now is called by the Name of *Robert Robins*, as by

Common Pleas. the said *Writ* above is supposed; and this he is ready to verify. Wherefore he prays *Judgment* of the said *Writ*, and that the same may be quashed, &c.

That the Testator was alive at the Time of suing out the Plaintiff's Original.

Original
tested the
6th of No-
vember.

And the said *Grace*, by *J. S.* her Attorney, comes and defends the Force and Injury above laid to her Charge, and craves *Oyer* of the said original *Writ* of the said *S.* and it is read to her in these Words: *George* the Second, (here recite the *Writ*, and then say) which being read and heard, she the said *Grace* prays *Judgment* of the said *Writ*, because she saith that the said *George* her late Husband, after the said *sixth* Day of *November*, in the said Year, (that is to say) on the thirtieth Day of the same Month of *November*, in the same Year, was alive and in good Health, at (the Place in the *Declaration*,) *Without that*, That the said *George* was dead at the said Time of the suing out the said original *Writ* of the said *S.* and this she is ready to verify: Wherefore she prays *Judgment* of the said *Writ*, and that the same may be quashed, &c.

Infancy in the Plaintiff.

And the said *R.* by *T. H.* his Attorney, comes and defends the Force and Injury above laid to his Charge, and prays *Judgment* of the said *Writ*, because he saith that the said *R.* now

R. now is within the Age of *twenty-one Years*, Common
(that is to say) of the Age of *eighteen Years*, Pleas.
and no more; and that the said *R.* hath de-
clared here in this Court in the said Action, by
T. H. his Attorney; whereas by the Law of
the Land, the said *R.* ought to have declared
by his *Guardian*, or by *his next Friend*, (spe-
cially admitted by this Court for that Pur-
pose;) and this he is ready to verify. Where-
fore inasmuch as the said *R.* is within the said
Age of *twenty-one Years*, and hath declared
in this Court by his Attorney in the said Ac-
tion, he the said *R.* prays *Judgment* of the
said *Writ*, and that the same may be quash-
ed, &c.

General Issues.

And the said *John*, by *William Sibs* his
Attorney, comes and defends the Force
Injury, and Damages, and whatever else he
ought to defend, when and where this Court
will take the same into Consideration, and
saith, that he did not undertake in such Man- Non Ass-
ner and Form as the said *Thomas* above com- sumpsit.
plains against him; and of this he puts him-
self upon the Country, and the said *Thomas*
does likewise the same. Therefore the Sheriff
is commanded, that he cause twelve free and
lawful Men of the Body of his County, to
come here on the *Octave of the Purification of*
the Blessed Virgin Mary, every one of which,
to have ten Pounds a Year, in Lands, Tene-
ments, or Rents, by whom the Truth of the

Common
Pleas.

Matter will be the better known; and who are in no wise related to either of the said Parties, to recognize whether the said *John* did undertake in the Manner and Form as the said *Thomas* above complains against him; because as well the said *John* as the said *Thomas* have submitted themselves to the *Jury*.

I submit it whether it would not be better to plead in this Manner.

Go on as before, to the Words *when and where this Court will take the same into Consideration*, and then to say, And the said *John* says, that he made no such Promise, (or Promises, as the Declaration is) in such Manner and Form, as the said *Thomas* above complains against him; and then go on as before.

Not Guilty.

And the said *John* says, that he is in no wise Guilty of the Premises above laid to his Charge, as the said *Thomas* above complains against him; and of this he puts himself upon his Country, and the said *Thomas* does likewise the same, &c.

That he
owes no-
thing.

And the said *John* saith, that he does not owe to the said *Thomas*, the said twenty Pounds, or any Sum of Money whatsoever, in such Manner and Form as the said *Thomas* above complains against him; and of this, &c.

That the
Bond is not
his Deed.

And the said *John* saith, that he ought not to be charged with the Payment of the said Debt, by Virtue of the said Bond; because he says, that the said Bond is not his Deed; and of this, &c.

And

And if to a *Bill Penal*, then you say,

And saith, that he ought not to be charged with the Payment of the said *Debt*, by Virtue of the said *Bill*, because he saith, that the said *Bill* is not his Deed; and of this, &c.

And so if the Declaration be in an Action of Debt for Rent upon an Indenture you say.

And the said *John* saith, that he ought not to be charged with the Payment of the said *Debt*, by Virtue of the said *Indenture*, because he saith, that the said *Indenture* is not his Deed; and of this, &c.

General Bars.

AND the said *John* (as before) and saith, Non Al that the said *Thomas* ought not to have, *sumpsit in* or maintain his said *Action* against him there, *fra sex* on, because he saith, that he did not under, *Annos.* take, (or that he made no such Promise or Promises in the Declaration mention'd) at any Time within six Years, before the Day That he of the said *Thomas*'s suing out his said Original Writ in such Manner and Form, as the *made no* said *Thomas* above complains against him; *such Pro-* and this he is ready to verify: Wherefore he *mise with-* in six Years. prays Judgment, whether the said *Thomas* ought

Common ought to have, or maintain his said *Action*
Pleas. against him, &c.

Replication thereto.

And the said *Thomas* saith, that he (notwithstanding any thing above alledged by the said *John* in his *Plea*) ought not to be precluded from having his said *Action* against the said *John*, because the said *Thomas* saith, that the said *John*, within six Years before the Day of Issuing out of the said *Original Writ* of the said *Thomas*, (that is to say) on the 20th Day of *June*, in the fifth Year of the Reign of our Sovereign Lord *George* the Second, King of *Great Britain*, &c. undertook, (or made such Promise or Promises, as in the said Declaration is, or are mention'd) in such Manner and Form, as the said *Thomas* above complains against him; and this he prays may be inquired of by the Country; and the said *John* prays likewise the same.

Note, if the Plaintiff sets forth no Day when the Original was sued out, in his *Replication* as above; nor the Defendant any in his *Plea*; the Plaintiff must produce an Original at the *Trial*; but if the Plaintiff replies, and sets forth a Day when the Original was sued out, or the Defendant sets forth a Day and Issue is joined thereon, then no Original need be produced at the *Trial*.

Payment

Payment pleaded to an Action on several Promises.

And the said *John*, by *J. L.* his Attorney, comes and defends the Force, Injury and Damages, and whatever else he ought to defend, when and where the Court will consider thereof; and saith, that the said *William* ought not to have or maintain his said Action against him, because he saith, that after making the several Promises and Undertakings mention'd in the said *Declaration*, and before the issuing out the said *Original Writ* of the said *William*, (that is to say) on the 10th Day of *July*, in the sixth Year of the Reign of his present Majesty, at *Thetford* aforesaid, in the said County of *Norfolk*, he the said *John* paid to the said *William* the Sum of twenty Pounds, which he then and there received in full Satisfaction of all Sums of Money at that Time due from the said *John* to the said *William*, and this he is ready to verify: Wherefore he prays *Judgment*, whether the said *William* ought to have, or maintain his said Action thereof against him, &c.

Replication thereto.

And the said *William* saith, that he ought not to be precluded from his said Action against him, because he saith, that the said *John* hath not paid to the said *William* the said Sum of twenty Pounds, in full Satisfaction and Discharge of all the several Sums of Money

Common
Pleas.

Money due from the said *John* to the said *William*, in such Manner and Form as the said *John* hath above alledged in his Plea. And this he prays may be inquired of by the Country; and the said *John* prays likewise the same.

If there are more Promises than one, then, to such of the Promises as you think the Plaintiff can't recover upon, you must plead the General Issue; as, suppose the Plaintiff declares upon an *Infirmul Computasset*, (that is to say) that the Plaintiff and Defendant accounted, and that there was so much in Arrear, besides an *Indebitatus Assumpsit*, for Goods sold and deliver'd, when there actually had been only Goods sold and deliver'd, but no Account stated; then to the *Infirmul Computasset*, you plead the General Issue and Payment to the other, thus.

And the said *John*, as to the last mention'd Promise in the said Declaration, * and also as to five Pounds Part of the said fifteen Pounds contained in the said first Promise, mention'd in the said Declaration, saith, that he did not undertake, (or he made no such Promise or Undertaking), as the said *Thomas* hath above declared against him; and of this he puts himself upon the Country; and the said *Thomas* does likewise the same. And as to ten Pounds, Residue of the said fifteen Pounds

* Note, this is so to be when the Plaintiff declares of more than was really due.

POCKET COMPANION.

85

Pounds, mention'd in the Promise and Undertaking in the said *Declaration* first above mention'd; the said *John* saith, that the said *Thomas* ought not to have, or maintain his said *Action* thereof against him, because he saith, that after making the said last mention'd Promise and Undertaking contained in the said *Declaration*; and before the Issuing out of the said Original Writ of the said *Thomas*, (that is to say) on the 10th Day of *September*, in the Year of our Lord 1732; at the said Parish of *Clement's Danes*, he the said *John* paid to the said *Thomas* the said Sum of ten Pounds; and this he is ready to verify: Wherefore he prays *Judgment*, whether the said *Thomas* ought to have, or maintain his said *Action* thereof against him, &c.

Common
Pleas.

Replication.

And the said *Thomas*, as to the said Sum of ten Pounds, Part of the said fifteen Pounds, mention'd in the said last Promise and Undertaking, saith, that notwithstanding any thing above alledged by the said *John* in his *Plea* above-mention'd, he the said *Thomas* ought not to be precluded from having his said *Action* against him, because he saith, that the said *John* hath not paid to the said *Thomas* the said Sum of ten Pounds, in such Manner and Form as the said *John* hath above in his *Plea* alledged; and this he prays may be inquired of by the Country; and the said *John* prays likewise the same.

If

The ATTORNEY'S

If the Declaration contains five Promises, the one an *Indebitatus Assumpsit* for twenty Pounds for Work and Labour, another a *Quantum Meruit* for the same, an *Indebitatus Assumpsit* for Goods sold and deliver'd, and a *Quantum Valebant* for the same, and an *Infinimul Computasset*.

And if the Defendant's Attorney is well satisfied from his Client, that he never bought any Goods of the Plaintiff that there never was such an Account stated between them, and that his Work and Labour comes but to ten Pounds, his best way of pleading it, is thus.

Non Assumpsit to the second third fourth and fifth Promises; and as to ten Pounds part of the 20 in the first Promise, and as to the Residue of the said 20 l. in the said first Promise, Payment pleaded.

And the said *John*, as to the second, third, fourth and fifth Promises mention'd in the said Declaration; and also as to ten Pounds Part of the said twenty Pounds, mention'd in the said first Promise in the said Declaration; saith, that he did not undertake, in such Manner and Form, as the said *Thomas* above complains against him; and of this he puts himself upon the Country; and the said *John* doth likewise the same. And as to the said ten Pounds, Residue of the said twenty Pounds, mention'd in the said first Promise in the said Declaration; the said *John* saith, that the said *Thomas* ought not to have, or maintain his said Action thereof against him, because he saith, that after the making of the said Promise and Undertaking, and before the Day of Issuing out the Original

nal Writ of the said *Thomas*, (that is to say) *Common*
such a Day, Year and Place, he the said *John* *Pleas*
 was ready, and tender'd Payment of the said
 Sum of ten Pounds to the said *Thomas*, which
 said Sum of ten Pounds so tender'd as afore-
 said to the said *Thomas*, he the said *Thomas*
 then and there did, and always afterwards,
 hath refused to accept; and that Sum he the
 said *John* is now ready to pay to the said *Tho-*
mas, if the said *Thomas* is willing to accept
 the same: And for that Purpose, the said
John brings the said Sum of ten Pounds into
 this Court to be paid to the said *Thomas*, if
 the said *Thomas* is willing to accept of the
 same; and this he is ready to verify: Where-
 fore he prays Judgment, whether the said
Thomas ought to have, or maintain his said
 Action thereof against him, &c.

Replication thereto.

And the said *Thomas*, as to the said Sum of
 ten Pounds, Residue of the said Sum of fifteen
 Pounds, mention'd in the said first Promise,
 in the said Declaration saith, that notwith-
 standing any thing above alledged by the
 said *John* in his said Plea, he the said *Tho-*
mas ought not to be precluded from having
 his said Action thereof against him the said
John; because he the said *Thomas* saith, that
 the said *John* did not tender to the said *Tho-*
mas the said Sum of ten Pounds, in such
 Manner and Form as the said *John* hath above
 alledged in his Plea; and this he prays may
 be inquired of by the Country; and the said
John prays likewise the same.

A Plea

Common
Pleas.

*A Plea of Payment to an Action for Money
due on a Bond*

And the said *John* comes and defends the Force, Injury and Damages, and whatever else he ought to defend, when and where the Court will consider thereof, and craves Oyer of the said *Writing Obligatory*, (or of the said *Bond*, according as the Plaintiff calls it in his Declaration) and it is read to him, &c. He likewise craves Oyer of the Condition of the said *Bond* there under written; and it is read to him in these Words, (here recite the Condition) which being read and heard, the said *John* says, that the said *Thomas* ought not to have his said Action against the said *John*, because he saith, that after the making of the said *Bond*, and after the said 25th Day of *July*, mention'd in the said Condition, and before the issuing out of the *Original Writ* of the said *Thomas*, (that is to say) on the 20th Day of *September*, in the Year of our Lord one thousand seven hundred and thirty-two, he the said *John* paid to the said *Thomas*, the said Sum of fifty Pounds mention'd in the said Condition, together with all Interest due thereon, according to the Form of the Statute in that Case made and provided; and this he is ready to verify: Wherefore he prays Judgment, whether the said *Thomas* ought to have, or maintain his said Action thereof against him, &c.

This Plea of Payment was given by the Act of 4 & 5 of Queen *Anne*, cap. 16. for the

the Amendment of the Law, as mentioned Common
among the Proceedings of the King's Bench Pleas.

**The Form of making up Records, and
of the Proceedings to Trial.**

*Pleas at Westminster, before Sir Robert
Eyre, Knight, and his Companions, (or rather The form of
Brethren) Justices of the Bench of our Sovereign the Placita.
Lord the King of Hillary Term, in the
sixth Year of the Reign of our said Sovereign
Lord George the Second, King of Great Britain,
France and Ireland, Defender of the Faith, &c.
Roll 67.*

*Norfolk. John Gooch, late of Thetford, in
the said County of Norfolk, Gent. was at-
tach'd to answer to Thomas Hunt in an Action
of Trespass, (or Trespass on the Case) and
whereupon the said Thomas complains, that
whereas, &c. so go on to the End of the De-
claration, and then begin the Plea thus:* Declaration.

*And the said Thomas, by Robert Martin
his Attorney, comes and defends the Force,
Injury and Damages, and whatever else he
ought to defend, when and where the Court
will consider thereof; and saith, that he did
not undertake, in such Manner and Form as
the said Thomas above complains against him;
and of this he puts himself upon his Country;
and the said Thomas doth likewise the same;
therefore the Sheriff is commanded, that he
cause to come here on the Octave of Saint Hil-
lary, twelve free and lawful Men of the
Body* The Plea.

Common
Pleas.

Body of his County, every one of which, to have ten Pounds a Year at least, of Lands, Tenements or Rents, *by whom* the Truth of the Matter may be the better known, and who are not related, either to the said *Thomas*, or the said *John*, to recognize and make a Jury of the Country between the said Parties in the said Action; because as well the said *John* as the said *Thomas*, between whom the Matter is in Dispute, have submitted themselves to the Jury.

If the Cause be not try'd of the same Term mention'd in the *Placita* above, then you must insert a new *Placita* of that Term that the Cause is tried in; between this and the following *Jurata*: And there 'tis proper always to leave two lines blank, between the *Issue* and the *Jurata*, lest the Cause should not be tried of that Term that the *Placita* is of.

The Form of a Jurata.

Norfolk. A Jury is here respited till *fifteen Days from the Feast-Day of Easter*, between *Thomas Hunt* the Plaintiff, and the said *John Gooch*, late of *Thetford*, in the said County, Gent. in an Action of *Trespas upon the Case*, unless his Majesty's Justices appointed to hold the Assizes in the said County, the 20th Day of *March*, at *Thetford* in the

said County, by Virtue of the Statute thro' Common
the Default of the Jurors; and because none Pleas.
of the Jurors came, therefore let the Sheriff have
the Bodies, &c. And be it known, that the
Justices have deliver'd a Writ thereof here in
this Court, this same Term to the Under-She-
riff of the same County, to be executed in due
Form of Law.

Before the late Act of Parliament of the
Fifth of his present Majesty, the Names of
the Jury were always expressed in the *Habeas Corpora*; and that was the Reason of
this Entry; but now the Names of the
Jurors are not mentioned in the Body of
the *Habeas Corpora*, but the Tenor of the
Writ now is, that the Sheriff shall have
the Bodies of the several Persons menti-
on'd in the Panel annex to that Writ, as
may be seen hereafter in the Form of a
Writ of *Habeas Corpora*; and therefore I
submit it, whether the Form of the above
Entry may not now be shortned in this
Manner.

Therefore let the Sheriff have the Bodies of
the several Persons by him return'd here to his
Majesty's Justices, on his Majesty's Writ of
Venire Facias to him directed, to make a
Jury between the said Parties in the said
Action.

If

Common
Pleas.

If your *Jurata* be in *London*, then it is thus:

London. A Jury is here respited between *Thomas Hunt Plaintiff*, and *John Goech*, late of *London*, Gent. in an Action of *Trespass upon the Case*, until (the very next Day after the Sittings, if in Term; but if not in Term, then to the first Return of the next Term); as in *fifteen Days from the Day of the Feast of Easter*, unless *Sir Robert Eyre*, Knight, his Majesty's Chief Justice of the Common Bench, appointed to try and determine Causes, by Force of the Statute in such Case made and provided, should on *Wednesday* the 14th Day of *February*, at *Guildball, London*, come before, thro' the Default of Jurors: And as to the rest as in the former.

If in *Middlesex*, you say, unless *Sir Robert Eyre*, Knight, his Majesty's Chief Justice of the Common Bench, appointed to try and determine Causes, by Force of the Statute in such Case made and provided, should come on *Tuesday* the 13th Day of *February*, at *Westminster* aforesaid, in the great Hall of Pleas, commonly called *Westminster-Hall*, come there before through the Default of Jurors: And as to the rest as in the former.

The

Common
Pleas.*The Form of the Warrants of Attorney.*

Norfolk. *Thomas Hunt* appoints in his Stead, *Robert Martin* his Attorney, against *John Gooch*, late of *Tbetford*, in the said County, Gent. in an Action of *Trespas upon the Case*.

Norfolk. *John Gooch*, late of *Tbetford*, in the said County, Gent. appoints in his Stead *Henry Cocksedge* his Attorney, in the said Action.

The Form of a Venire.

GEORGE the Second, by the Grace of God, of *Great Britain, France and Ireland*, King, Defender of the Faith, &c. To the Sheriff of *Norfolk* Greeting. We command you, that you Cause twelve free and lawful Men of the Body of your County, (every of which to have ten Pounds a Year at least, in Lands, Tenements or Rents, by whom the Truth of the Matter will be the better known) to come before our Justices at *Westminster*, in fifteen Days from the Feast-Day of *Easter*, and who are in no ways related, either to the said *Thomas Hunt* the Plaintiff, or to the said *John Gooch*, late of *Tbetford*, in your County, Gent. to make a Jury of the Country, between the said Parties, in an Action of *Trespas upon the Case*, because, as well the said *Thomas*, as the said *John*, between whom the Matter is in Dispute, have submitted themselves to the Jury; and have you there the
Names

Common
Pleas.

Names of the Jurors, and this Writ. *Witness*
Sir Robert Eyre, Knight, at *Westminster*, the
12th Day of *February*, in the sixth Year of
our Reign.

Borret.

The Form of the Habeas Corpora.

George the Second, by the Grace of God,
King of *Great Britain, France and Ireland*,
Defender of the Faith, &c. To the Sheriff of
Norfolk, Greeting. We command you that
have the Bodies of the several Persons menti-
oned in the Panel annex'd to this Writ, before
our Justices at *Westminster*, in fifteen Days
from the Feast-Day of *Easter*; or before our
Justices appointed to hold the Assizes in your
County, by Force of the Statute in such Case
made and provided, if they should come be-
fore, on *Monday* the 20th Day of *March*, at
Thetford in your County; the said Jurors ha-
ving been summoned in our Court, before our
Justices at *Westminster*, to make a Jury be-
tween *Thomas Hunt* Plaintiff, and *John*
Gooch, late of *Thetford* in your County,
Gentleman, in an Action of *Trespass upon the*
Case; and have you there this Writ. *Wit-*
ness Sir Robert Eyre, Knight, at *Westminster*,
the twelfth Day of *February*, in the sixth
Year of our Reign.

If your *Habeas Corpora* be in *London*,
you only vary it in this Manner; instead
of (*before our Justices appointed to take*
the Assizes in your County, &c.) you say,
Or

Or before Sir Robert Eyre, Knight, our Common Chief Justice, appointed to hear, try and determine Matters in Variance depending in our said Court of Common Bench, by Force of the Statute in such Case made and provided; if he shall come before on Thursday the 6th Day of February, (which must be the Day of the Sitting when you intend to try the Cause) at Guildhall, London, thro' the Default of the Jurors. And then you go on as before; Jurors being summoned, &c.

Note, this Rule must be observed in Causes to be tried in London and Middlesex.

Your *Venire* must bear Teste on the first Day of the Term, on which Issue is joined; and returnable at a Return-Day before you try the Cause: And the Teste of your *Habeas Corpora* should be on the Return-Day of your *Venire*, and the Return thereof should be on a Return-Day after your Cause is to be tried; as for Instance, Suppose your Cause is to be tried at the third Sitting in *Hillary* Term, which we will suppose to be on the fourth of February; your *Venire* must bear Teste on the 23d Day of January, and be returnable in fifteen Days from the Day of St. *Hillary*; and your *Habeas Corpora* will bear Teste on

Common
Pleas.

on the 31st Day of January, and must be returnable *on the Octave of the Purification of the blessed Virgin Mary.* And though originally at Common Law there was to be fifteen Days between the Teste and the Return of every Writ, yet by the Statute of the 13th of King Charles the Second, *cap. 2. sect. 6.* reciting, that many Suits commenced by original Writs had been protracted, and long delayed from Judgment and Execution, by Reason of the Necessity of having fifteen Days at least, between the Days of the Teste and the Days of Returns of Writs then used in Personal Actions, and also in Actions of Ejectment for Lands and Tenements; for Remedy thereof, and for the more easy expediting Trials, and for the more speedy executing of Judgments, for the Time then to come, It was enacted, 'That in all 'Actions of Debt, and all other Personal 'Actions whatsoever, and also in all Actions of Ejectment for Lands and Tenements then depending; or which at any 'Time then after should depend by original Writ, in either of his Majesty's 'Courts aforesaid, after any Issue therein 'joined to be tried by a Jury, and also 'any Judgment had or obtained, or to 'be had or obtained in either of the Courts
afore-

Common
Pleas.

'aforesaid, in any such Action as afore-
 'said, there should not need to be fifteen
 'Days between the Teste-Day and the
 'Day of the Return of any Writ or Writs of
 ' *Venire facias*, *Habeas Corpora Juratorum*,
 ' or *Distringas Juratores*; Writs of *Fieri*
 ' *facias*, or Writs of *Capias ad Satisfaciendum*;
 ' and that the want of fifteen Days
 ' between the Teste-Day and the Day of
 ' the Return of any such Writ, should not
 ' be assigned for, or taken or adjudged to
 ' be Error; any Law, Custom, Statute or
 ' Usage to the contrary thereof in any wise
 ' notwithstanding.

And it may not be amiss to explain
 what is meant in the Award of the several
 Writs of *Habeas Corpora* and *Distringas*,
 by the Sheriffs being commanded to have
 the Bodies of the Jurors before the Judges
 of the Court from whence the respective
 Process Issues, on the next Return-Day
 after the Cause is tried, unless (*if in Lon-*
don or Middlesex, the Chief Justice of the
respective Courts, or if at the Assizes) the
 Justices appointed to hold the Assizes at
 such a Place, in such a County, should
 come before, that is, before the Return of
 the *Habeas Corpora* or *Distringas*, there at
 the *Assizes* through the Default of the
 Jurors.

F

In

Common
Pleas.

2 Inst.
422.

In order to understand which it is necessary to shew, that before the Statute of *Magna Charta*, Affizes were only to be taken in the Court of *Common Pleas*, or before the Justices in *Eyre*, which occasioned great Delay to the Plaintiffs. And by that Statute v. *Magna Charta*, cap. 30. it was provided that the Affizes should be taken in the proper County, once every Year. So that my Lord Coke says in his 4 *Inst.* 158. that no Affizes by this Statute could be returnable in the *King's Bench* or *Common Pleas*, unless the Disseisin had been made in the County where the Benches sat; and if both Benches sat in the same County, then the Plaintiff was at Liberty to make his Writ returnable either in the *King's Bench* or *Common Pleas*; and he says further, that in that Case it appears that the Justices of both Benches had original Jurisdiction ordinarily, without any Patent.

But Trials by *Nisi prius* were first instituted by the Statute of *Westminster* 2. and the Authority for that Purpose is annexed to *Justices of Assize*, by Force of a *Judicial Writ*. And by this last mentioned Statute, that Remedy provided by *Magna Charta* was thought too Short; and therefore by the Statute of *Westm.* 2. they
were

were appointed to be taken three Times a ^{Common} Year. The first was between the fifteenth ^{Pleas.} Day of the Feast of St. *John the Baptist* and the *Gule of August*, by which is meant the Feast of St. *Peter ad Vincula*, which is the 1st of *August*, and the second was between the *Feast of the Exaltation of the holy Cross* and the *Utas*, (or the *Octave*) of St. *Michael*; and the third was between the Feast of the *Epiphany* and the *Feast of the Purification of the blessed Virgin Mary*.

It would be too tedious here to mention the several Remedies provided by this Statute, and the several Alterations that have been made as to holding the Assizes; therefore I shall omit it, and only explain what is meant by the Sheriffs being commanded to have the *Jury before the King*, if in the *King's Bench*, or if in the *Common Pleas*, before the *Justices at Westminster*, at such a Day, which if the Cause is tried in Term, is the next *Return-Day* afterwards, if at the *Assizes*, at the first *Return* in the subsequent Term, or before the respective Chief Justice if in *London or Middlesex*; but if at the *Assizes*, or before his Majesty's *Justices* appointed to hold the *Assizes*, according to the Form of the Statute in that Case made and provided, if they should come before, (that is before the Day of the Return of the

Common Pleas. Habeas Corpora, or Distringas) at such a Day and Place, (viz.) when and where the Sittings or the Assizes are to be held through Default of the Jurors.

The Jurors are obliged by the *Venire* to come before the Judges of the respective Courts out of which it Issues, at the Return thereof to recognize, as hath been said before, and try whether what was contained in the Issue, was on the Part of the Plaintiff or Defendant true. If the Jury comes not there upon the Return of the *Venire* for that Purpose, then they are Defaulters; and the Judges being obliged to try the Cause at *Nisi prius*, upon this further Process of a *Habeas Corpora* or *Distringas*, is thro' the Default of the Jurors.

And therefore the Award of these Writs being with the Word *Nisi*, and the Writs themselves with the Word *Si*, may be, I think, easily reconciled; for the Award of a *Distringas* is an Entry signifying, that inasmuch as the Jury did not appear at the Return of the *Venire* to try the Cause; therefore they are respited until such a Day, which is the Return of the *Habeas Corpora* or *Distringas*; unless the Judges appointed to hold the Assizes at such a Place, should come there before the Return of the *Habeas Corpora* or *Distringas*, to try the Cause,

Cause, thro' the *Default* of the *Jurors* not having been at the Day and Place where the *Venire* was returnable for that Purpose; and then the Entry goes on further, let the Sheriff therefore have their Bodies, (that is) if the Judge should come at the *Sittings*, or at the *Affizes*, and the *Jurors* should again make *Default*) before the Judges of the Court, out of which the Process issues, at the Day of the Return thereof.

Common
Pleas.

And the Reason of a new *Placita* used in the *King's Bench*, I apprehend to be very plain, because the other *Placita* is supposed to have been made use of when the Cause would have been tried before, at the Return of the *Venire*, but thro' the *Default* of the *Jurors*.

And therefore, before there is an Entry of a *Jurata*, which is the Award of the *Distingas*, it is thought convenient that there should be a new *Placita*, to signify that the Cause is again brought on to be tried, which would have been tried before at the Return of the *Venire*, but for the *Default* of the *Jurors* in not being there.

And when the Writ itself is made out, pursuant to such Award by the Court, it would be inconsistent to make use of the Word *Nisi* there, because by the Writ the Sheriff is commanded to have the Bodies

Common
Pleas.

of the *Jurors* at the Day of the Return, or before the *Judges* at the *Affizes*, if they should come there before such Return, at such a Day, thro' the Default of the *Jurors*: For as has been said, whenever they come to try a Cause upon a *Distringas*, or a *Habeas Corpora*, it is for the Default of the *Jurors* not having come before.

See at the
end of this
Book for
other Ha-
beas Cor-
pora's and
Juratas.

If the *Jurors* do come at the *Affizes* and try the Cause, then the *Postea*, which is the Return of the Writ of *Nisi prius*, takes Notice of their having been there, and what was done thereon; and the *Jury* are discharged, and the Entry of their having been respited, is no more than as being consonant to the Writ which commands the Sheriff to have them at *Westminster*, or wherever the Writ is returnable, lest they should not have come to do Justice to their Country; and that there may be a Continuance of the Process, that upon their further Default, if there had been any, a new Process might have Issued to compel them to come.

The Form of a Subpœna for Witnesses.

George the Second, &c. To A. B. C. D. E. F. and G. H. Greeting. We command you and every of you (hereby firmly enjoining you, that you lay aside all Manner of Excuses

ses and Delays whatsoever) that you be in Common your proper Persons before our Justices appointed to take the Assizes to be held at *Thetford*, in the County of *Norfolk*, on (such a Day) being the Day of the Assizes next following, to testify and declare the Truth in a certain Matter in Variance, depending in our Court before our Justices at *Westminster*, in an Action of Trespass upon the Case undetermined, between *Thomas Hunt* Plaintiff, and *John Gooch*, late of *Thetford*, in the County of *Norfolk*, Gentleman, Defendant; and this you, nor either of you are in no wise to omit, under the Penalty of one Hundred Pounds, to be had of you, and every of you. Witness Sir *Robert Eyre*, Knight, the twelfth Day of *February* in the sixth Year of our Reign.

If the Cause be in *London*, then you say,

That you be before Sir *Robert Eyre*, Knight, our Chief Justice of the Common Bench, at *Guildhall*, in *London*, on *Wednesday* the 14th Day of *February*, now next ensuing, to testify, &c.

If in *Middlesex*, then you say,

Before Sir *Robert Eyre*, Knight, our Chief Justice of the Common Bench, on *Tuesday* the 13th Day of *February*, now next ensuing, at *Westminster*, at the great Hall of Pleas, commonly called *Westminster Hall*, to testify, and declare, &c.

The ATTORNEY'S

The Form of a Ticket is thus.

Mr. A. B.

By Virtue of a Writ of *Subpœna* to you directed and herewith shewn unto you, you are Personally to be and appear before his Majesty's Justices of Assize, on — next, being the — Day of — at — of the Clock in the — noon of the same Day, at the Court then to be holden at, — to testify the Truth according to your Knowledge, in a certain Cause now depending, and then and there to be tried, between *Thomas Hunt* Plaintiff; and *John Gooch*, Gentleman, Defendant; in an Action of Trespass upon the Case, on the Part of — And thereof you are not to fail, on Pain of one Hundred Pounds, dated the — Day of — in the sixth Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, &c. and in the Year of our Lord one Thousand seven Hundred and Thirty-two.

The Form of a Postea.

Afterwards on the Day, and at the Place within contained, the within named *Thomas Hunt*, by his Attorney within named, came before Sir *Robert Eyre*, Knight, Chief Justice to our Sovereign Lord the King, of his *Common Bench*, Sir *John Fortescue Aland*, Knt. one of his said Majesty's Justices of the said
Com-

Common Bench, Justices of our Sovereign *Common-
Lord the King*, appointed to hold the Assizes *Pleas.*
for the County of *Suffolk*, and the within
named *John Gooch*, altho' solemnly required,
came not there, but made default: Therefore
let the Jury, whereof Mention is made with-
in, be accepted of against him by his Default;
whereupon, the Jurors summon'd to be upon
that Jury, some of them, (that is to say) *Francis Scotchmere, John Howard, Henry
Brittain, Phineas Todd*, (so naming the rest
that appeared,) came, and were sworn upon
that Jury: And because the Remainder of the
Jurors of that Jury have not appeared, there-
fore others of the By-standers, are by the
Sheriff of the County aforesaid, at the Re-
quest of the said *Thomas Hunt*, and by the
Command of the said Justices, put on a-fresh,
whose Names are in the within written Panel,
to be assised according to the Statute in such
Case made and provided; which said Jury so
newly put on, (that is to say) *Henry York,*
and *Robert York*, who being summon'd like-
wise came to declare the Truth of the within
Contents, together with the other Jurors be-
fore impanelled and sworn, and being chosen,
try'd and sworn, declare upon their Oaths,
that the said *John* did undertake, in the Man-
ner and Form, as the said *Thomas* within
complains against him: And they assess the
said *Thomas Hunt's* Damages, occasioned by
the said within Contents, besides his Expences
and Costs laid out by him in this Behalf to
twenty-two Pounds, and for his Expences and
Costs to forty Shillings.

Common
Pleas.

The Meaning of the Words, *therefore let the Jury be accepted of against him by his Default*, is when a Cause is called on, and the Plaintiff and Defendant are called; if the Defendant does not answer or say any thing, when the Panel is call'd over by way of Challenge to the Array, or to the Poll: Then the Court proceeds on to swear the Jury, and the Defendant not appearing to the Panel, the Cause is tried, and the Entry upon the *Postea* suggests, that the Defendant, tho' solemnly requir'd, did not come, but made *Default*; therefore the Jury are taken, or more properly accepted of by the Court, thro' the Defendant's *Default*; tho' in Truth, the Defendant and his Attorney might be there ready at the first Calling of the Cause, yet the Associate makes the Entry in that Manner, that the Defendant made *Default*; but the best Reason I can give for it is, that the Cryer and Associate have two Shillings a-piece for the *Default*, (tho' in Truth, none ever made, and the Entry is so drawn up to warrant that Fee.)

Therefore the Author of a late Treatise, said to be Instructions for Clerks and Practisers of the *King's Bench* and *Common Pleas*, quite mistakes the Matter, when he translates the Entry; *Therefore let a Verdict*

dict of the Jury be taken against him by Common
 Default, and he carries his Mistake fur- Pleas.
 ther, when he tells us, that "this is the
 "Form of a *Postea*, where the *Verdict* is
 "for the *Plaintiff* by the *Defendant's* De-
 "fault, (that is, says he,) where the De-
 "fendant, after the Jury are ready to give
 "their *Verdict*, doth not appear on his
 "being called, knowing that the *Verdict*
 "will certainly pass against him;" So far
 is that from Truth, if he would have
 look'd into the Entries, he would have
 found, that notwithstanding this Entry of
 the Jury being taken or accepted of by
 the Court, against him thro' his *Default*,
 yet the *Defendant* may give Evidence in
 the Cause, and obtain a *Verdict* against the
Plaintiff, in the same Manner as if he had
 appeared when the Panel was called over,
 and that he lost no other Advantage there-
 by, but that he could not challenge any
 of the *Jurors*; and therefore the Jury are
 taken and accepted of, to try the Cause,
 by his *Default* of not appearing, when the
 Panel was call'd over. In *Lutwich* 783.
Sleigh and *Metham*, there the Entry is,
 that the Jury may be accepted of against
 the *Defendant*, thro' his *Default*, though
 there was a vigorous Defence made for the
Defendant; so in the Case of *North* and
Lad.

Common
Pleas.

Lad. Lu. 756. there is the same Entry, that the Jury shall be accepted of against the *Defendant*, thro' his Default, where Part was found for the *Plaintiff*, and a special *Verdict* as to the rest; upon which Judgment was given for the *Defendant*; so in *1 Saunders* 245. *Craft* against *Boite*, there is the same Entry, and a Defence made at the Trial; so that to imagine that this Entry, *quod Jurata capiatur versus eum per Defalt*, is only where the *Defendant* makes no Defence at the Trial, is wrong, and to translate the Words, *Jurata capiatur versus eum per Defalt*, that the *Verdict* shall be taken against him by his Default, is, for want of Understanding the Entry in *Latin*; which I think a Man should always do before he translates it into *English*, or else the Reader may be led into Errors that he may not easily get rid of, when he finds it in a Book of so good Authority, as this Instruction to Clerks and Practisers is pretended to be.

Judgments by Default.

AND the said *A. B.* by *C. D.* his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, when and where the Court will consider thereof

thereof, and says nothing to Bar or Obstruction Common
 the Action of the said C. whereby the said E. Pleas.
 remains undefended by the said A. ; for which
 Reason the said E. ought to recover his Da-
 mages against the said A. occasioned by the
 Premisses. *But because it is not known what*
Damages the said E. hath sustained by reason
 of the Premisses, therefore the Sheriff is com-
 manded, that he diligently enquire, by the
 Oath of twelve honest and lawful Men of his
 said County, what *Damages* the said E. hath
 sustained, as well by reason of the Premisses,
 as for his *Expences* and *Costs* laid out by him
 about his Suit in this Cause. And that the
 Sheriff cause the *Inquisition* that he takes
 thereon to be here before his Majesty's
 Justices at *Westminster*, in *three Weeks* from
the Day of St. Michael, under his own Seal,
 and the Seals of those by whose Oath he
 shall take such *Inquisition*; and that he
 have there at the same time the said Writ,
 directed to him, as aforesaid.

If it be in *Assumpsit*, some have made
 use of this Form, instead of saying,

Whereby the said E. ought to recover his
Damages, occasioned by reason of the Premis-
ses, to say, Whereby the said E. ought to re-
cover Damages, occasioned by the said A's not
performing several Promises and Undertakings
made by him to the said E. and so on, as in
the former.

If

Common
Pleas.

If it be in Trespass, it is proper to say,

For which reason the said *A.* ought to recover his *Damages*, occasioned by the said *Trespass*, committed by the said *A.* against him the said *E.*

If in Trespass, Assault and Imprisonment, then you say,

For which reason the said *E.* ought to recover against the said *A.* his *Damages*, occasioned by the said *Trespass*, *Assault* and *Imprisonment*, committed by the said *A.* against him the said *E.*

If in Covenant,

For which reason the said *E.* ought to recover against the said *A.* his *Damages*, occasioned by the said Breach (or Breaches, as the Declaration is) of Covenants.

A Judgment on nil dicit in Debt.

You say as in the former, to these Words,

Whereby the said *E.* remains undefended by the said *A.* Therefore it is considered and adjudged, that the said *E.* do recover against the said *A.* his said *Debt* and his *Damages*, occasioned by detaining the same, adjudged by this Court to the said *E.* with his Assent, to fifty Shillings; and be the said *A.* amerced, &c.

Judg-

POCKET COMPANION.

III

Judgment by Cognovit Actionem.

Common
Pleas.

And the said *A.* by *C. D.* his Attorney, (*as in the first.*) And saith, that he cannot deny the said *Action* of the said *E.* nor but that he owes to the said *E.* the said *twenty Pounds.*

And if it be upon Bond, you say thus,

And saith, that he cannot deny but that the said *Writing Obligatory* is his Deed, nor but that he owes the said *E.* the said Sum of *twenty Pounds*, in such Manner and Form as the said *E.* above declares against him: *Therefore it is considered and adjudged*, that the said *E.* do recover his said *Debt* against the said *A.* and his *Damages* occasioned by detaining the same, awarded to the said *E.* with his Consent, by this Court, to fifty Shillings. And be the said *A.* amerced, &c.

Non sum informatus in Case.

And the said *A.* by *C. D.* his Attorney, comes and defends the Force, Injury, and Damages, (*and so on as in the former*). And the said Attorney saith, that he is *not instructed* by his *Client* the said *A.* to give any Answer for him to the said Complaint of the said *E.* and saith nothing more thereto, whereby the said *E.* remains undefended by the said *A.* *For which Reason* the said *E.* ought to recover his *Damages* occasioned by reason of the Premises. *But because it is not known what*

Common
Pleas.

what Damages, (*so on as in the Entry of a Nil dicit in Case.*)

If it be in *Debt* it varies from the former no otherwise than as a *Nil dicit* in *Case* varies from a *Nil dicit* in *Debt*, which may be very easily observed without a useless Repetition.

A Judgment where the Defendant relinquishes his Plea of Solvit ad diem, and confesses the Action.

And hereupon the said *A.* relinquishes his said Plea, pleaded by him, *as above*, and saith, that he cannot *gain-say* the said *Action* of the said *E.* and owns that he hath not paid to the said *E.* the said Sum of *fifty Pounds*, upon the said *twenty-fifth Day of December*, which he ought to have done, according to the Form and Effect of the said Condition, as the said *E.* above declares against him. Therefore it is considered and adjudg'd, that the said *E.* do recover against the said *A.* his said Debt and his Damages, occasioned by detaining the same, which are awarded to the said *E.* by this Court, *with his Consent, to fifty Shillings*; and be the said *A.* amerced, &c.

A Judgment upon a Demurrer to a Scire facias upon a Recognizance.

At which Day came here as well the said *E.* as the said *A.* by their said Attornies. And.

And thereupon the Premisses being here seen, Common and fully understood by the Justices of this Pleas.

Court, it appears to the said Justices that the said Plea of the said *E. G.* and *N.* pleaded in Delay of the *Execution* as aforesaid, are insufficient in Law to debar the said *E.* from having his said *Execution* against the said *E.* for two Hundred Pounds, and against the said *G.* and *N.* for the said Hundred Pounds, by them severally acknowledged in Form aforesaid, as the said *E.* hath above alledged. Therefore it is considered and adjudg'd, that the said *N.* have his *Execution* against the said *B.* for the said two Hundred Pounds, acknowledged by him in Form aforesaid, and against the said *G.* and *N.* for the said Hundred Pounds, acknowledged by them, and each of them severally and respectively in Form aforesaid, &c.

The Entry of a Non Pros, after Appearance by the Defendant for want of a Declaration.

Devon. ss. *A. B.* who sued out his Majesty's Writ against *C. D.* late of *Southmolton*, in the County of *Devon*, in an Action of *Trespasse* on the Case, doth not prosecute the same; Therefore it is consider'd and adjudg'd by this Court, that he and his Pledges of prosecuting be amerc'd; the Names of the Plaintiff's Pledges are, *John Doe*, and *Richard Roe*; and be the said *C.* therefrom for ever dismissed. It is also consider'd and adjudg'd, that the said *C.* recover against the said *A.* thirty three

Common
Pleas.

three Shillings and four Pence, which by the Discretion of the Justices of this Court, according to the Form of the Statute in that Case made and provided, are awarded to the said C. at his Request, for his Expences and Costs sustained by him in defending this Suit, &c.

*The Form of a Non Pros, for want of a
Replication.*

After the Words of the Plea, you must go on thus: — Whereupon the said *Rachel* being summon'd to reply to the Plea of the said *David*, came not, nor doth he prosecute his said Writ any further against the said *David*. Therefore it is adjudg'd, that the said *Rachel* and his Pledges for the Prosecution, be amerced; and the said *David* may depart thereof for ever dismiss'd. It is likewise adjudg'd by the Justices of this Court, that the said *David* do recover against the said *Rachel*, forty-six Shillings and eight-Pence, for his Damages and Costs awarded to the said *David*, at the Discretion of the said Justices; according to the Form of the Statute in such Case made and provided: And let the said *David* have an Execution thereon, &c.

A Writ of Inquiry.

GEORGE the Second, by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, &c. To the Sheriffs of London, Greeting. Whereas A. B.
late

late of *E.* in your County, Yeoman, was at Common
tach'd to appear in our Court, before our Pleas.
Justices at *Westminster*, to answer to *C. D.*
in an Action, that whereas (*so go on with*
your Declaration to the Words, to the Damage
of the said C. twenty Pounds,) as it is said,) and such are the Proceedings therein in our
Court, that the said *C.* ought to recover his
Damages by reason of the Premises, (*this is*
said to be most proper where it is for Words
or Torts) and if in Assumpsit, his Damages
occasion'd for not performing several Promi-
ses and Undertakings made by the said *A.* to
the said *C.* But because it is not known what
Damages the said *C.* hath sustain'd by reason
of the Premises, (for of the not performing
the said several Promises and Undertakings,)
We command you, that by the Oath of twelve
honest and lawful Men of your County, you
diligently inquire what Damages the said *C.*
hath sustained, as well by reason of the Pre-
misses, (for of not performing the said several
Promises and Undertakings) as for the *Expens-*
es and Costs laid out by him about his Suit
in this Cause. And the *Inquisition* which you
shall make thereon, do you make apparent
to our Justices at *Westminster*, on the *Octave*
of the Purification of the Blessed Virgin Mary,
Under your Seal, and the Seals of those by
whose Oaths you shall take such *Inquisition*.
And have you there the Names of those by
whose Oaths you shall take the said *Inquisi-*
tion, and this Writ. Witness Sir *Robert Eyre*,
Knight, at *Westminster*, the twenty-third
Day of *January*, in the sixth Year of our
Reign.
A Writ

Common
Pleas.

A Writ of Inquiry where the Plaintiff died after Judgment, and before the Writ of Inquiry.

GEORGE the Second, &c. To the Sheriff of *Middlesex*, Greeting. Whereas *E. P. Widow*, {Executrix of the last Will and Testament of *M. P.* her late Husband, deceased, late one of the Attornies of this Court) in the Term of the *Holy Trinity*, last past, prosecuted out of our Court of *Common Bench*, against *A. B.* late of *London*, Distiller, our Writ of *Capias*, returnable in our said Court of *Common Bench*, before our Justices of the same Court, in an Action of *Trespass* upon the *Case*; to which said Writ the said *A.* appeared at the Return of the same; and thereupon the said *E.* as Executrix of the said last Will and Testament of the said *M.* her late Husband deceased, declared against the said *A.* in *Michaelmas* Term last, in this our said Court of *Common Bench*; for that whereas (and so go on with the Declaration; and thereupon such Proceedings were had, that it was consider'd here in our said Court of *Common Bench*, by our Justices of the same Court, that the said *E.* ought to recover her *Damages*, occasion'd by the not performing of the said several Promises and Undertakings made by the said *A.* to the said *M.* in his Life-time, in the Form aforesaid. But because it was not known what *Damages* the said *E.* had sustained, by reason of the Premises, Therefore we com-
manded

manded you, that by the Oaths of twelve honest and lawful Men of your County, you should diligently inquire what *Damages* the said *E.* had sustained, as well by reason of the Premises, as for her *Expences* and *Costs* laid out by her about her Suit in that behalf. And that the *Inquisition* which you should take thereon, you should cause to be before our said Justices of our said *Common Bench* at *Westminster*, on the *Morrow of St. Martin*, under your Seal, and the Seals of those by whose Oaths you should take such *Inquisition*, as by the Record and Proceedings thereon, now remaining in our said Court of *Common Bench*, before our said Justices at *Westminster*, manifestly may appear. Nevertheless an *Inquiry* of the said *Damages* yet remains to be made: And the said *E.* is now dead, as we have received Information from *R. B.* Administrator of all and singular the Goods and Chattles, Rights and Credits, which were of, and belong'd to the said *M.* at the Time of his Death, unadministred by the said *E.* And therefore at the Instance of the said *R.* in our said Court, before our said Justices at *Westminster*, by our Writ of *Scire facias*, issuing out of this our said Court of *Common Bench*, we lately commanded you, that by honest and lawful Men of your Bailiwick, you should cause it to be known to the said *R.* that he was to have been before our said Justices of this our said Court of *Common Bench* at *Westminster*, in fifteen Days of *St. Martin*, to shew Cause, if he knew of, or had any thing to say for himself, why the said *R.* should not recover

Common
Pleas.

Common
Pleas.

cover the said *Damages*, by reason of the Premises against the said *A.* according to the Form of the Statute in such Case made and provided, if the said *A.* thought it Expedient so to do. *At which Day* the said *R.* came into our said Court, before our said Justices at *Westminster*; and you our said Sheriff at the same Day, made a Return to our said Writ, that by *E. S.* and *J. R.* honest and lawful Men of your Bailiwick, you had caused it to be known to the said *R.* that he should have been before our said Justices at *Westminster*, at the Day and Place aforesaid, to have shewn Cause in Form aforesaid, if he had thought it Expedient for him so to have done, as by our said Writ he was commanded to do; which said *R.* being so warned, and solemnly required, did not come at that Day but made Default; wherefore it was consider'd and adjudg'd, in our said Court of Common Bench, by our Justices of the same, that the said *R.* ought to recover his said Damages occasion'd by reason of the Premises. *But because it is unknown what Damages* had been sustained by the said *E.* by reason of the Premises; therefore we command you, that by the Oaths of twelve honest and lawful Men of your Bailiwick, you diligently inquire what Damages the said *E.* sustained, as well by reason of the Premises, as for her *Expences* and *Costs*, laid out by her about her said Suit in that Behalf. And the Inquisition which you shall take thereupon, do you make appear before our said Justices of our said Court of Common Bench at *Westminster*, on the Octave of *St. Hillary*, under your

your Seal, and the Seals of those, by whose Common Oaths you shall take such *Inquisition*, and Pleas. have you there likewise the Names of those Persons by whose Oaths you take such *Inquisition*, and this Writ. Witness Sir *Robert Eyre*, &c.

Executions.

A Capias ad satisfaciendum.

GEORGE the Second, &c. To the Sheriff of *Middlesex*, Greeting, We command you, that you take *A. B.* late of *Westminster*, in your County, Esquire; if he be found in your Bailiwick, and safely keep him, so that you have his Body before our Justices at *Westminster*, on the Octave of the Purification of the Blessed Virgin Mary, to make Satisfaction to *C. D.* for ten Pounds, which in our Court, before our Justices at *Westminster*, were awarded to *C. D.* for his Damages which he sustained, by reason of a certain *Trespas* upon the Case, committed by the said *A.* to the said *C.* at *Westminster* aforesaid, in your County; (if it be in an Action upon the Case upon an Assumpsit, then say) for his Damages which he has sustained, by reason of not performing several Promises and Undertakings made by the said *A.* to the said *C.* at *Westminster* aforesaid, in your County, whereof he is convicted; and have you there this Writ. Witness Sir *Robert Eyre*, Kt. at *Westminster*, the 23d Day of January, in the sixth Year of our Reign. If

The ATTORNEY'S

If in Covenant.

For his *Damages* which he sustained by reason of a certain *Covenant* (or of certain *Covenants made between them*), according to the Form and Effect of a certain *Indenture*, (or certain *Articles*, as the Case is) made at *Westminster*, in your County, and broken by the said *A.* (then as in the former.)

If in Trespass and Assault.

For his *Damages* which he sustained by reason of a certain *Trespass* and *Assault*, (or *Trespass*, *Assault* and *Imprisonment*, as the Case is) committed by the said *A.* against the said *C.* against our Peace at *M.* in your County, whereof he is convicted, (then as in the former.)

Upon a Nonsuit in Case.

To make Satisfaction to *A. B.* late of *W.* in your County, for one hundred Shillings, which in our Court, before our Justices at *Westminster*, were awarded to the said *A.* by the Discretion of our same Justices, according to the Form of the Statute in that Case made and provided against Parties, Plaintiffs, who do not prosecute their Writs, and proceed on the same, for his *Expences* and *Costs*, which he sustain'd by *C. D.*'s not proceeding on his Writ, in a certain Plea of *Trespass on the Case*, prosecuted and sued out by the said *C. D.*

C. D. against the said *A.* in our same Court ; Common
and have you there this Writ. Witness, &c. Pleas.

Another Form.

For his *Expences* and *Costs* which he laid
out, by reason of a *groundless Claim* of *C. D.*
in a certain *Plea* (or in an *Action*) of Debt,
upon a Demand of twenty Pounds, prosecuted
by the said *C.* against the said *A.* whereof the
said *C.* is convicted ; and have you there this
Writ.

If in Ejectment.

In a certain *Plea* (or in a certain *Action*) of
Trespass and *Ejectment*, wherein the said *C.*
proceeds no further on his Writ thereof against
the said *A.* whereof he is convicted.

If in Debt.

To make Satisfaction to *C. D.* as well for a
Debt of twenty Pounds, which the said *C.*
hath lately recovered against him in our Court
before our Justices at *Westminster* ; as also
for fifty Shillings, which, in our same Court
were awarded to the said *C.* for his *Damages*
which he had sustained, by reason of his de-
taining the said Debt, whereof the said *A.* is
convicted. And have you there this Writ.
Witness, &c.

G

If

Common
Pleas.

*If it be against an Executor de bonis propriis,
after a Devastavit return'd, then thus,*

We command you, that you take *A. B.* late of *Thetford*, in your County, *Cloathworker*, Executor of the last Will and Testament of *E. T.* if he be found in your Bailiwick, and safely keep him, so that you have his Body before our Justices at *Westminster*, on the Morrow of the Purification of the Blessed Virgin Mary, to make Satisfaction to *C. D.* as well for a Debt of twenty Pounds, which the said *C.* hath recovered against him in our Court, before our Justices at *Westminster*; as for fifty Shillings, which are in our same Court awarded to the said *C.* for his Damages which he sustained, by reason of detaining the said Debt whereof he is convicted. And whereupon it is consider'd and adjudg'd, in our same Court, that the said *C.* have an Execution against the said *A.* Executor, as aforesaid, for the said Debt and Damages to be levied of the proper Goods and Chattles of the said *A.* because the said *A.* hath wasted, converted, and disposed of to his own Use, divers Goods and Chattles, which were of, and belong'd to the said *E. T.* the Testator at the Time of his Death, which came to the Hands of the said *A.* after the Death of the said *E.* to be administred, to the Value of the said Debt and Damages, as you your self, on the Octave of St. Hillary, last past, returned to our Justices at *Westminster*.

minster. And have you there this Writ. Wit- Common
ness, &c. Pleas.

A Testatum Ca. Sa.

As in the first Ca. Sa. here inserted, to the Words, whereof he is convicted, and then you say, And whereupon our Sheriff of Suffolk hath returned (or made a Return) to our Justices at Westminster, on the Octave of St. Hillary last past, that the said A. is not to be found in his Bailiwick. And in as much as it it sufficiently testified in our same Court, that he lurks and wanders up and down in your County. And have you there this Writ. Witnels, &c.

A Non omittas Ca. Sa.

We command you omit not, by means of the Liberty of St. *Etbeldred* in your County, but enter therein, and take *A. B. and so on, as in the former, to the Words, whereof he is convicted, and whereupon you your self have return'd (or made a Return to our Justices at Westminster, on the Octave of St. Hillary last past,) and some say only (at a certain Day now past) that in order to have the said Writ duly executed, you sent to the Bailiff of the said Liberty of St. Etbeldred in your County, who hath the full Power of returning all Writs and Precepts, and of the Execution of the same within the said Liberty, for that you could not execute the said Writ in your County, out of the said Liberty,*

Common (which said Bailiff gave you no manner
Pleas. of Answer thereto.) And have you there
this Writ.

A Testatum non omittas Ca. Sa. is no more than by beginning the Writ as before, and adding the Words belonging to the *Testat'* and *Non omittas* after it.

A Capias ad satisfaciendum for an Executor in Debt, upon a Judgment by Default after a Sci. Fa.

GEORGE the Second, &c. (as in the *Ca. Sa. in Debt*) only you say, to make Satisfaction to *C. D. Widow, Executrix* of the last Will and Testament of *W. C.* as well for a Debt of twenty Pounds, which the said *W.* in his Life-time recovered against him, before our Justices at *Westminster*, as also for fifty Shillings, which in our same Court were awarded to the said *W.* in his Life-time, for his Damages which he sustained by reason of detaining his said Debt whereof the Defendant is convicted: And whereupon it is consider'd and adjudg'd in our same Court, that the said *C.* have an *Execution* against the said *A.* for the said Debt and Damages by his Default. And have you there this Writ. Witness, &c.

A Capias

A Capias ad satisfaciendum, for the Residue of a Debt and Damages, Part having been levied by a Fieri facias.

GEORGE the Second, &c. To the Sheriff of *Suffolk*, Greeting. Whereas we lately commanded you, that you should cause to be made of the Goods and Chattels of *A. B.* late of *Stowmarket*, in your County, *Hosier*, as well a certain Debt of twenty Pounds, which *C. D.* had recovered against him in our Court before our Justices at *Westminster*; as also sixty Shillings, which were in our same Court awarded to the said *C.* for his Damages which he sustained, by reason of detaining his said Debt; And that you should have the Money before our Justices at *Westminster*, in fifteen Days from the Day of *St. Martin*, to render to the said *C.* for his said Debt and Damages, whereof the said *A.* is convicted, and you yourself return'd (or made a Return) to our Justices at *Westminster*, at that Day that you had caused to be made, the Sum of ten Pounds, of the said Goods and Chattels of the said *A.* and that you had the Money ready at the Day and Place aforesaid; and that the said *A.* had no other, or any more Goods and Chattels in your Bailiwick, whereby you could cause to be made or levied the Residue of the said Debt and Damages, as you had been commanded by the said Writ; therefore we command you, that you take the said *A.* if he be found in your Bailiwick, and

G 4

safely

Common
Pleas.

safely keep him, so that you have his Body before our Justices at *Westminster*, on the *Octave of St. Hillary*, to make Satisfaction to the said C. for the Residue of the said Debt and Damages; and have you there this Writ. Witness, &c.

A Fieri Facias upon Promises unperformed.

George the Second, &c. To the Sheriff of *Suffolk*, Greeting. We Command you, that you cause to be made of the Goods and Chattles of *A. B.* late of *Stowmarket*, in your County, Yeoman, in your Bailiwick, twenty Pounds, which in our Court, before our Justices at *Westminster*, were awarded to *C. D.* for his Damages which he sustained, by reason of not performing certain Promises and Undertakings made by the said *A.* to the said *C.* at *St. Edmunds-Bury* in your County; and have you the Moneys before our Justices at *Westminster*, on the *Octave of St. Hillary*, to render to the said *C.* for his said Damages, whereof the said *A.* is convicted; and have you there this Writ. Witness, &c.

For Words.

For his Damages which he sustained, by reason of speaking, and publishing certain scandalous Words by the said *A.* of the said *C.* at *St. Edmunds-Bury* in your County, whereof the said *A.* is convicted, &c.

If

*If in Covenant.*Common
Pleas.

For his *Damages* which he sustained, by reason of the Breach of a certain Covenant, (or *Covenants as the Case is*) made between the said *C.* and the said *A.* according to the Force, Form, and Effect of certain *Articles* (or of certain *Indentures*, as the Case is) made at *St. Edmunds-Bury*, in your County, whereof the said *A.* is convicted, &c.

If in Ejectment.

For his *Damages* which he sustained by reason of a certain *Trespass and Ejectment*, committed by the said *A.* against the said *C.* at *St. Edmunds-Bury* in your County, with Force and Arms against our Peace, whereof the said *A.* is convicted, &c.

If in Replevin.

By reason of taking and unjustly detaining Cattle of the said *C.* at *St. Edmunds-Bury*, in a certain Place there called *G.* whereof he is convicted.

If in Trespass.

For his *Damages* which he sustained by reason of a certain *Trespass* committed with Force and Arms, and against our Peace, by the said *A.* against the said *C.* at *St. Edmunds-Bury* in your County, whereof he is convicted, &c.

Common
Pleas.

If in Debt.

We command you, that you cause to be made of the Goods and Chattles of A. B. late of Ipswich in your County, Yeoman, in your Bailiwick, as well a certain Debt of forty Pounds which C. D. hath recovered against him, in our Court, before our Justices at Westminster, as also forty Shillings which in our same Court were awarded to the said C. for his Damages, which he sustained by reason of detaining his said Debt, whereof the said A. is convicted.

A Testatum fieri facias in Debt.

Whereof he is convicted : And inasmuch as our Sheriff of Norfolk hath returned (or made a Return) to our Justices at Westminster, at a certain Day now past, that the said A. had no Goods or Chattles in his Bailiwick, whereof the said Debt and Damages, or any Part thereof, could be made or levied. *Whereas it is testified in our Court, that the said A. hath sufficient Goods and Chattles in your Bailiwick, whereof the said Debt and Damages may be made and levied : and have you there this Writ. Witness, &c.*

A Non Omittas Fieri facias.

George the Second, &c. To the Sheriff of Suffolk, Greeting. We command you, that you omit not, by means of the Liberty of St. Etheldred in your County, but that you enter

ter therein and cause to be made of the Goods Common and Chattels of *A. B.* late of *St. Edmunds-Bury* in your County, Hosier, within the said Liberty, as well a certain Debt of One hundred Pounds, which *C. D.* hath recovered against him in our Court, before our Justices at *Westminster*, as also Fifty Shillings, which in our same Court were awarded to the said *C.* for his *Damages* which he sustained by reason of detaining the said Debt. And have you the Money before our Justices at *Westminster*, on the *Octave of St. Hillary*, to render to the said *C.* for his Debt and *Damages* aforesaid; inasmuch as you yourself have returned (or made a *Return*) to our Justices at *Westminster*, at a certain Day now past; that in order to have a due Execution of the said Writ to you directed, you had given your Mandate to the Bailiff of the said Liberty, who had full Power of executing and returning all Writs within the said Liberty; and that the said Writ could not be executed in your County, out of the said Liberty, (which said Bailiff had given you no answer thereto); and have you there this Writ. *Witness, &c.*

A Testatum Fieri facias against an Executor, after a former Testatum had issued, and nulla bona returned after a Devastavit.

George the Second, &c. To the Sheriff of *Norfolk*, Greeting. Whereas we commanded *Fieri fac'* to our Sheriff of *Middlesex*, that of the Goods *the Sheriff* and of *Middlesex*.

Common
Pleas.

and Chattles which were of, and belonged to *C. B. Gentleman*, lately called *C. B. of the Parish of St. Martins in the Fields*, in the same County of Middlesex, Gentleman, at the Time of his Death, in the Hands of *W. J.* late of the *Parish of St. Clements Danes*, in the said County of Middlesex, *Hofier*, and *Anne* his Wife, *Executrix* of the last Will and Testament of the said *C.* unadministered, he should cause to be levied as well a certain Debt of one Hundred and ten Pounds, which *T. F. Administrator* of all and singular the Goods and Chattles of *P. W.* who died intestate, recovered in our Court, before our Justices at *Westminster*, against them, as also seven Pounds and ten Shillings, which in our same Court were awarded to the said *E. T.* for his Damages which he sustained by reason of detaining the said Debt, to be levied of the Goods and Chattles which were of, and belonged to the said *C.* at the Time of his Death, in the Hands of the said *W. J.* and *Anne* his Wife, unadministered; if they had so many Goods and Chattles which were of, and belonged to the said *C. D.* at the Time of his Death, in their Hands unadministered: If they had not so many, then the said Damages, to be levied of the proper Goods and Chattles of the said *W. J.* and that he should have the Money there before our Justices at *Westminster*, in three Weeks from the Day of *St. Michael*, and that Writ. And whereupon our said Sheriff of *Middlesex*, at that Day, made a Return to our Justices at *Westminster*, that before that Writ came to him, directed

The Sher-
riffs Re-
turn.

as aforesaid, the said *William* and *Anne* had Common
wasted, converted and disposed of to their Pleas.
own Use, divers Goods and Chattles, which
were of, and belonged to the said *C.* at the
Time of his Death, to the Value of fifty
Pounds. And further our said Sheriff of
Middlesex, returned, that the said *William*
and *Jane* had not any Goods and Chattles
which were of and belonged to the said *C.*
at the Time of his Death, in his Bailiwick;
whereby the said Debt, or any Part thereof,
could be levied; nor had they any Goods or
Chattles of their own in his Bailiwick,
whereby the said Damages, or any Part there-
of, could be levied, as by the said Writ he was
commanded. And thereupon, it having been
testified in our Court, before our Justices at
Westminster, that the said *W.* and *A.* had
sufficient Goods and Chattles of their own
in *London*, whereof the said fifty Pounds of
the said Debt and Damages might be made
and levied; We therefore commanded our
Sheriffs of *London*, that they should cause
to be made of the said proper Goods and
Chattles of the said *W.* and *A.* in their Baili-
wick, the said fifty Pounds of the said Debt
and Damages; and that they should have the
Money before our Justices at *Westminster*, in
fifteen Days from the Day of *St. Martin*, to
render to the said *E.* towards her Debt and
Damages aforesaid. Whereupon our said
Sheriffs of *London*, at that Day made a Re-
turn to our Justices at *Westminster*, that the
said *W.* and *A.* had not any Goods or Chat-
tles in their Bailiwick, whereby the said fifty
Pounds

*Recital of
a Fieri fa-
cias to the
Sheriffs of
London.*

*The Sher-
iffs Re-
turn.*

Common
Pleas.

Testatum.

Pounds of the said Debt and Damages, or any Part thereof could be made or levied. And whereas it is sufficiently testified in our said Court, before our said Justices at *Westminster*, that the said *W.* and *J.* have sufficient Goods and Chattles in your County, whereof the said fifty Pounds of the said Debt and Damages may be made and levied; Therefore we command you, that of the Goods and Chattles of the said *W.* and *J.* in your Bailiwick, you cause to be made the said fifty Pounds of the said Debt and Damages, and have you the Moneys before our Justices at *Westminster*, on the *Octave of St. Hillary*, to render to the said *E.* in Form afore said, and this Writ. Witness, &c.

If it be against an Administrator without a Devastavit, then you say,

We command you, that of the Goods and Chattles which were of and belonged to *R.G.* at the Time of his Death, who died intestate, in the Hands of *A.B.* Widow Administratrix of all, and singular the Goods and Chattles, which were of the said *R.* in your Bailiwick, you cause to be made as well a certain Debt of fifty Pounds, which *J.S.* Gentleman, hath recovered against her in our Court, before our Justices at *Westminster*; as also fifty Shillings, which were awarded to the said *J.* in our same Court, for his Damages which he sustained by reason of detaining the said Debt, to be levied of the Goods and Chattles which were of the said *P.* at the Time of his Death,
in

in the Hands of the said *A.* unadministered, Common Pleas. if she hath so many; and if not, then the said Damages to be levied of the proper Goods and Chattles of the said *A.* and have you the Money (as in the former.)

An Elegit.

George the Second, &c. To the Sheriff of *Berkshire*, Greeting. Whereas *C. D.* lately in our Court, before our Justices at *Westminster*, by the Consideration of the same Court, recovered against *A. B.* late of *Farringdon* in your County, Mercer, as well a certain Debt of two hundred Pounds, as also one hundred Shillings, which in our same Court were awarded to the said *C. D.* for his Damages which he had sustained by reason of detaining the said Debt, *whereof he is convicted.* And the said *A.* afterwards came into our same Court, and according to the Form of the Statute in that Case made and provided, made his Election to have delivered to him all the Goods and Chattels of the said *A. B.* (except his Oxen and Beasts of Plow) and likewise a Moiety of all his Lands and Tenements in your Bailiwick, *to hold* the same Goods and Chattels as his own Goods and Chattels, and also *to hold* the said *Moiety* as his Freehold, to him and his Assigns, according to the Form of the said Statute, until he shall have levied the said Debt and Damages thereon. And therefore we command you, that without delay, you cause to be extended at a reasonable Price, and deliver'd to the said *A.* all the Goods and Chatels
of

Common
Pleas.

of the said *A.* (except his Oxen and Beasts of Plow) and likewise a *Moiety* of all his Lands and Tenements in your Bailiwick, of which the said *A.* was seized, *on the Morrow of the Holy Trinity*, in the sixth Year of our Reign, (*at which Day Judgment was given thereon*) or at any Time since, for him to keep the said Goods and Chattels as his own Goods and Chattels; and also for him and his Assigns to keep the said *Moiety* as their Freehold, according to the Form of the said Statute, until the said Debt and Damages shall be thereof levied. *And after what Manner* you shall execute this our Precept, do you make appear to our Justices at *Westminster*, in *three Weeks from the Day of St. Michael*, under your Seal and the Seals of those Persons by whose Oaths you shall make such Extent and Appraisment. And have you there this Writ. Witness, &c.

An Elegit after an Elegit.

Recital of
the Judgment.

George the Second, &c. To the Sheriff of *Middlesex*, Greeting. Whereas *C. D.* lately in our Court, before our Justices at *Westminster*, by the Consideration of the same Court, had recovered against *A. B.* late of *Hampstead* in your County, forty Pounds; which in our same Court were awarded to the said *C.* for his Damages which he had sustained by reason of a *certain Trespass* committed by the said *A.* against the said *C.* with Force and Arms, and against our Peace, at *Hampstead* aforesaid in your County, *whereof he is convicted*; and the said *C.* afterwards came into our

our Court, and according to the Form of the Common Statute in such Case made and provided, chose to have deliver'd to him, all the Goods and Chattles of the said *A.* (except his Oxen and Beasts of Plow) and likewise a Moiety of all his Lands and Tenements in your Bailiwick, to keep the same Goods and Chattles as his own Goods and Chattles, and also to hold the said Moiety as his Freehold, to him and his Assigns, according to the Form of the said Statute, until the said Damages should be levied thereupon. Wherefore we commanded you, that without Delay, you should cause to be extended by a reasonable Price, and delivered to the said *C.* all the Goods and Chattles of the said *A.* (except his Oxen and Beasts of Plow) and likewise a Moiety of all his Lands and Tenements in your Bailiwick, of which the said *A.* was seized or possessed of, *in three weeks from the Day of St. Michael last past,* (on which Day Judgment was given thereon) for him to keep the said Goods and Chattles as his own Goods and Chattles, and also to hold the said Moiety as his Freehold, to him and his Assigns, according to the Form of the said Statute, until he should have levied the said Damages thereof; and in what Manner you should have executed that our Precept, you was to make appear to our Justices at *Westminster, on the Octave of St. Hilary last past,* and you having returned to our Justices at *Westminster,* a certain Inquisition, taken before you at the Castle of *Norwich,* on the tenth Day of *January last past,* by the Oaths of twelve honest and lawful Men of your

Pleas.

*Recital of
the first
Elegit.*

*Of the
Sheriff's
Return.*

Common
Pleas.

your Bailiwick ; by which it is found, that the said *A.* was seized of the Manor of, &c. (*reciting the Lands returned by the said Inquisition*) Whereupon the said *C.* came into our Court, saying that the said *A.* at the Time of giving the said Judgment, and afterwards had divers Lands and Tenements in your County, of the yearly Value of forty Pounds, besides the said Manor, &c. (*here naming the Lands*) above specified in the said *Inquisition*. And was also possessed of divers Goods and Chattles in your County, to the Value of forty Pounds, which you might have extended, appraised, and deliver'd to the said *C.* *And therefore we command you,* as we before commanded you, that you cause to be extended by a reasonable Price, and to be delivered to the said *C.* all the said Goods and Chattles of the said *A.* (except his Oxen and Beasts of Plow) and likewise a Moiety of all his Lands and Tenements in your County, besides the said Manor, &c. (*naming the Lands belonging thereto*) above specified in the said *Inquisition* ; of which the said *A.* at the Time of giving the said Judgment, or at any Time since, was seized or possessed of ; and also a Moiety of the said Manor and Tenements, with the Appurtenances above specified in the said *Inquisition*, for him and his Assigns to hold the same as their Freehold, according to the Form of the Statute in such Case made and provided, until the said Damages shall be levied thereupon. And in what Manner you shall execute this Precept, do you make appear to our Justices at *Westminster,*

*The second
Elegit.*

minster, on the Octave of the Purification of the Blessed Virgin Mary, under your Seal, and the Seals of those by whose Oaths you shall take such Inquisition: And have you there this Writ. Witness, &c.

An Elegit of a Moiety of an annual Rent against Tertenants, after a Scire facias.

George the Second, &c. To the Sheriff of Kent, Greeting. Whereas in our Court, before our Justices at Westminster, it was lately adjudg'd, that T. B. might have an Execution against H. C. by his Default, as well for a Debt of one Hundred and ninety Pounds, which the said T. heretofore in our Court, (that is to say) in Hillary Term, in the fifth Year of our Reign, before Sir Robert Eyre, Knight, and his Brethren, our Justices of our Court of Common Pleas at Westminster, by the Consideration of the same Court, had recovered against J. G. late of Greenwich in your County, Carpenter; as also eight Pounds, which in our same Court were awarded to the said E. T. for his Damages which he had sustained by reason of detaining the said Debt, of a certain annual Rent issuing out of the Manor of Wm. in your County, by the Default of the said H. And inasmuch as you yourself returned to our Justices at Westminster, on the Octave of St. Martin last past, that the said H. was Tenant of an annual Rent of Thirty-two Pounds, and that the said annual Rent of Thirty-two Pounds, was due to the said J. G. on the Octave of St. Hillary,

in

Common
Pleas.

in the sixth Year of our Reign, (*at which Day Judgment was given against the said H. J. for the Debt and Damages aforesaid.*) And afterwards the said T. came into our same Court, and according to the Form of the said Statute, in such Case made and provided, chose to have deliver'd to him, a Moiety of the said yearly Rent, issuing out of the said Manor, with the Appurtenances, to hold to him and his Assigns, according to the Form of the said Statute, until the said Debt and Damages should be levied therof. *And therefore we command you (as in the former).*

An Elegit after a Fieri Facias, upon which a Devastavit had been found by a Verdict against Executors.

*Recital of
the Fieri
facias.*

George the Second, &c. To the Sheriff of Surrey, Greeting. Whereas by our Writ, we lately commanded our Sheriffs of London, that of the Goods and Chattles which were of and belong'd to H. B. lately called H. B. of Southwark, Esq; at the Time of his Death, in the Hands of M. B. late of Croydon, in your County, Gent. and R. S. late of Kingston, in your County, Master, being Executors of the last Will and Testament of H. B. the Testator, in their Bailiwick, they should cause to be made, as well a Debt of two hundred Pounds, which W. had lately recovered in our Court, before our Justices at Westminster, against the said M. B. and R. S. as also ten Pounds, which in our same Court were awarded to the said W. S. for his Damages which

which he sustained by reason of detaining the Common
said Debt, to be levied of the said Goods and Pleas.

Chattles, if they had so many, unadministred
in their Hands; and if they should not have
so many, then the said Damages to be levied
of the proper Goods and Chattles of the said
M. B. and *R. S.* and that they should have
the Money before our Justices at *Westminster*,
on the *Octave of St. Martin* last past, to ren-
der to the said *W.* for his said Debt and Da-
mages, whereof the said *M. B.* and *R. S.* are
convicted. And the same Sheriffs at that Day,
recurr'd to our Justices at *Westminster*, that *The She-*
the said *M. B.* and *R. S.* at the Day of suing *riffs Re-*
out the said Original Writ of the said *W.* *turn.*
(that is to say) on the second Day of *April*,
in the fifth Year of our Reign, had divers
Goods and Chattles, which were of, and be-
long'd to the said *M. B.* the Testator, at the
Time of his Death, in their Hands unadmi-
nistred, to the Value of two hundred Pounds,
whereof the said *W.* might have had Satisfa-
ction for his said Debt, as it was found by a
certain Jury of the County, by Virtue of our
Writ of *Nisi prius*, taken at *Guildhall*, of the
City of *London*, before Sir *Robert Eyre*,
Knight, our Chief Justice of our said Court
of Common Pleas, (there being associated to
him *John Higbam*, Gent. according to the
Form of the Statute in such Case made and
provided) which said Goods and Chattles,
they the said *M. B.* and *R. S.* had wasted,
converted and disposed of to their own Use;
whereby the said Sheriffs were not able to levy
the said Debt and Damages, or any Part there-
of.

Common
Pleas.

of. And our said Sheriffs of *London* further returned, that the said *M. B.* and *R. S.* had not any Goods or Chattles in their Bailiwick, whereof they were able to levy the said Debt and Damages, or any Part thereof, as they had been commanded to do; *wherefore it was considered* in our same Court, that the said *W.* might have an Execution against the said *M. B.* and *R. S.* for the said Debt and Damages, to be levied upon the proper Goods and Chattles of the said *M. B.* and *R. S.* And the said *W.* afterwards came into our same Court, and according to the Form of the Statute in such Case made and provided, chose to have deliver'd to him, all the Goods and Chattles of the said *M. B.* and *R. S.* (except their Oxen and Beasts of Plow) and likewise a Moiety of all their Lands and Tenements in your Bailiwick, (as in the former).

An Elegit after a Scire Facias, upon a Recognizance against Bail taken in the Time of Vacation before the Lord Chief Justice.

Recital of
the Judgm.

GEORGE the Second, &c. To the Sheriff of *Suffex*, Greeting. Whereas lately in our Court, before our Justices at *Westminster*, it had been consider'd, that the said *K. W.* might have an Execution against *L. P.* of *Chichester*, in your County, Mercer, and *J. C.* of the same Place, Woollendrapers, for two hundred and six Pounds thirteen Shillings and four Pence, which they the said *L.* and *J.*

and

and each of them, on the 29th Day of No. Common
ember, in the fifth Year of our Reign, before Pleas.

Sir Robert Eyre, Knt. our Chief Justice of our
Court of Common Pleas, at his Chamber, si-
tuate in *Serjeants-Inn in Chancery-Lane*, had
acknowledged to owe to the said T. to be le-
vied of the Goods and Chattels, Lands and
Tenements of them, and each of them, as by
the Recognizance thereof deliver'd by the said
Chief Justice, into our same Court, before
Sir Robert Eyre and his Brethren, our said
Justices of the Court of *Common Pleas*, to be
inrolled, and which is now inrolled of Record
in the said Court, may manifestly appear.
And the said T. afterwards came into our said
Court, and according to the Form of the Sta-
tute in such Case made and provided, chose to
have delivered to him, all the Goods and
Chattels of the said L. and J. (*except their
Oxen and Beasts of Plow*) and likewise a
Moiety of all their Lands and Tenements in
your County, to hold the same as his Free-
hold, to him and his Assigns, according to the
Form of the said Statute, until the said Debt
and Damages shall be levied thereof. And
therefore *We command you*, that without de-
lay, you cause to be extended by a reasonable
Price, and to be delivered to the said T. all the
Goods and Chattels of the said L. and J.
(*except their Oxen and Beasts of Plow*) and
likewise a Moiety of all their, and each of
their Lands and Tenements in your Bailiwick,
whereof they, or either of them were seized
or possessed of, at the time of their Entry in-
to the said Recognizanc, or at any time since
(*as in the former.*) I thought

Common
Pleas.

of. And our said Sheriffs of London further returned, that the said *M. B.* and *R. S.* had not any Goods or Chattles in their Bailiwick, whereof they were able to levy the said Debt and Damages, or any Part thereof, as they had been commanded to do; *wherefore it was considered* in our same Court, that the said *W.* might have an Execution against the said *M. B.* and *R. S.* for the said Debt and Damages, to be levied upon the proper Goods and Chattles of the said *M. B.* and *R. S.* And the said *W.* afterwards came into our same Court, and according to the Form of the Statute in such Case made and provided, chose to have deliver'd to him, all the Goods and Chattles of the said *M. B.* and *R. S.* (except their Oxen and Beasts of Plow) and likewise a Moiety of all their Lands and Tenements in your Bailiwick, (as in the former),

An Elegit after a Scire Facias, upon a Recognizance against Bail taken in the Time of Vacation before the Lord Chief Justice.

Recital of
the Judgm.

GEORGE the Second, &c. To the Sheriff of *Sussex*, Greeting. Whereas lately in our Court, before our Justices at *Westminster*, it had been consider'd, that the said *K. W.* might have an Execution against *L. P.* of *Chichester*, in your County, Mercer, and *J. C.* of the same Place, Woollendrapers, for two hundred and six Pounds thirteen Shillings and four Pence, which they the said *L.* and *J.*

and

and each of them, on the 29th Day of *No-* Common
vember, in the fifth Year of our Reign, before *Pleas.*

Sir *Robert Eyre*, Knt. our Chief Justice of our Court of Common Pleas, at his Chamber, situate in *Serjeants-Inn* in *Chancery-Lane*, had acknowledged to owe to the said *T.* to be levied of the Goods and Chattels, Lands and Tenements of them, and each of them, as by the Recognizance thereof deliver'd by the said Chief Justice, into our same Court, before Sir *Robert Eyre* and his Brethren, our said Justices of the Court of *Common Pleas*, to be inrolled, and which is now inrolled of Record in the said Court, may manifestly appear. And the said *T.* afterwards came into our said Court, and according to the Form of the Statute in such Case made and provided, chose to have delivered to him, all the Goods and Chattels of the said *L.* and *J.* (*except their Oxen and Beasts of Plow*) and likewise a Moiety of all their Lands and Tenements in your County, to hold the same as his Freehold, to him and his Assigns, according to the Form of the said Statute, until the said Debt and Damages shall be levied thereof. And therefore *We command you*, that without delay, you cause to be extended by a reasonable Price, and to be delivered to the said *T.* all the Goods and Chattels of the said *L.* and *J.* (*except their Oxen and Beasts of Plow*) and likewise a Moiety of all their, and each of their Lands and Tenements in your Bailiwick, whereof they, or either of them were seized or possessed of, at the time of their Entry into the said Recognizanc, or at any time since (*as in the former.*) I thought

Common
Pleas.

I thought it would not be disagreeable to mention some few Observations I have made on *Judgments*, wherein I have endeavour'd to avoid Prolixity; and they are as follows.

Observations on Judgments.

Coke in his first *Institutes* 39. tells you, that *Judicium* is *quasi Juris dictum*, the very voice of Law and Right; and the antient Words of a Judgment are very significant, which are *Consideratum est* because that Judgment is ever given by the Court upon due Consideration; and some *Judgments* are *Final*, others *Interlocutory*.

An *Interlocutory Judgment* is the Judgment that the Court gives, upon due Consideration had of the Matter, that the Plaintiff ought to recover; but it being uncertain what Damages he ought to recover, therefore the *Final Judgment* cannot be given till the Sheriff by a Jury, on a Writ of *Inquiry*, has ascertained the Damages, which when they are assess'd by such Jury, that *Inquisition* is return'd; and upon such Return the Court gives *Final Judgment*, that the Party do (that Instant) recover the Damages found by the Jury, and the Costs added thereto by the proper Officer

of

of the Court by way of *Increase*, that he may suffer as little as possible in the Suit. Common Pleas.

The Damages found by the Jury cannot be encreased by the Court, without the Request or Assent of the Plaintiff. *Latch* 177. *Good and Lawrence, Mich.* 2 *Car. Roll* 119.

And where that Request or Assent does not appear in the Entry of the Judgment, it is Error. 2 *Cro.* 587. *Sache and Yeoman*, the same Book, 415. *Machine's Case*.

And tho' it has been said that the Court may *mitigate* as well as *increase* the Damages, I do not find any Instance of it; and the Law seems to be otherwise in *Dyer* 105. where it was held, That tho' they might increase the Damages, yet they could not *mitigate* them: But there is no doubt but they may grant a new Trial for excessive Damages, and many Cases there are to warrant that to be Law.

In an Action upon the *Case* or *Trespass*, &c. which consists of Damages, the Jury may find less Damages than the Plaintiff lays in his *Declaration*, but they cannot find more; if they do, it is Error; for the Law presumes that a Man knows his own Damages better than any one else can, and will lay the most that he has sustain'd; but if the Jury gives more Damages than the

Common
Pleas.

the Plaintiff has declar'd for, if the Plaintiff Releases them upon the same Record, all is then set right as it should be. 10 Co. 115, 116, 117. *Pitfeild's Case*.

And you have a Case reported by *Latch* 223. of *Hooper* and *Pope*, where the Court encreased the Damages found by the Jury, where there was a very dangrrous Mayhem, upon View thereof, and the Oath of a Surgeon, that it was a Mayhem, tho' the Declaration was generally for an Assault, Battery, and wounding only. The same was done in the Case of *Mallet* and *Ferrers*. 1 Leon 139.

And it was said by the Court, in the Case of *Angell* and *Shatterton*, 1 Syd. 108. that where the Particulars of the Mayhem are not expressed in the Declaration, the Court cannot increase the Damages upon View of the Mayhem, unless the Judges of *Nisi prius*, before whom the Cause is tried, certifies the Particulars of the Mayhem to the Court, or where it is tried before one of the Judges of the same Court, where the Judgment is to be given.

But there is an Anonymous Case in 1 *Ventris*, where it was said, that the Court would not increase the Damages where the Word *Mayhemavit* was not set forth in the Declaration. 1 Vent. 327.

As

As to the Conclusion of a Judgment with *Misericordia*, &c. nothing having before been said thereof, I think proper to mention somewhat as to that Particular.

Common:
Pleas.

This Word *Misericordia* signifies, that the Court have given Judgment against the Defendant, that the Plaintiff shall recover his Debt or Damages; but the Court having done with the Suit, and finished their judicial Authority, leave him entir'd to Compassion; and *Bracton* gives a fine Description of this, to shew the Reason why the Defendant ought to be thus left by the Court entir'd to Compassion, that is, not to be imprison'd, but only to be amerc'd. *Bracton* 106. b.

But these Amercements were anciently at the Discretion of the Lords, the Stewards and Judges of the Courts-Baron, and Court-Leets; and finding that People were amerced sometimes unmercifully, therefore the Legislature by the Statute of 9 H. 3. cap. 14. Provided that no Freeman should be amerced but according to the Greatness of the Offence, and that by his Peers; and by that Statute, another's Villian should be amerced, saving his Wainage, if he falls into our Mercy, (says the Statute.)

And it appears by *Fleta*, Lib 2. cap. 66. that when any Lord or Steward did amerce

H

a Par-

Common
Pleas.

a Party without any *Compassion*, and not according to the Nature of his Offence, the Party was entitled to a Writ of *Moderata Misericordia*, whereby the Inferior Lords or Stewards were commanded, that they should not amerce the Defendant, contrary to the Tenor of *Magna Charta*; but I submit it, whether the Conclusion of the Judgment had not better be, that the Defendant *be amerced*; or if any Person should be fond of the Word *Misericordia*, then the Conclusion of the Entry may be, *and be the Defendant at the Mercy of our Sovereign Lord the King*.

And this Form of the Entry of a Judgment by *Misericordia*, is in Contradistinction to a Judgment that was to be entered by *Capiatur*.

For in Actions of *Debt*, *Account*, Actions upon the *Case*, and several other Actions for Wrongs that were not directly in Breach of the King's Peace, or against any positive Statute Law, the *Judgment* was, that the Plaintiff should recover his Debt or Demand, or for that he had not accounted, or whatever else was the *Judgment* of the Court, he was to make Satisfaction, and there they left him only to be *amerc'd*.

But

But in Actions of Trespass, Assault and Imprisonment, in Actions of Deceit, and upon Penal Statutes, or for Offences against Statute Laws, the Court gave a more severe Judgment, that is, that, besides making Satisfaction to the Plaintiff, he should be taken and imprisoned till he paid the King a Fine for his Offence. Common Pleas.

And so where a Man pleaded, that a Deed declared upon, or that came out otherwise on the Pleadings, was not his Deed; there if it was found to be his Deed, the Judgment did not entitle him to Mercy, but the Judgment was *quod capiatur*, that he should be taken for the King's Fine, and imprison'd till he paid it.

And where a *Misericordia* was entred by the Plaintiff, instead of a *Capiatur*, tho' it was for the Benefit of the Defendant, yet it was Error. But by the Statute 4 & 5 of *W. & M. cap. 12*, this Fine is taken away, and the Judgments are entered in *Misericordia*, as in other Actions. But because the Statute of *William and Mary* mentions only Trespass, Ejectment, Assault and false Imprisonment, yet a *Capiatur* should have been entred upon a *non est factum* pleaded, and found for the Plaintiff after this Act of Parliament, because that is *Casus omissus* out of the Act.

H 2

But

Common
Pleas.

But by the Statute of the Amendment of the Law, of 4 & 5 *Annae cap. 16.* which cures all Faults in Judgments by Default, as well as if they had been by Verdict, except the want of an Original or Warrants of Attorney; a *Capiatur* entred instead of *Misericordia*, and so *vice versa*, is not Error, because by 16 & 17 *Car. 2. cap. 8.* those Faults are cured after a Verdict.

A Judgment in the Common Pleas relates to the *Essoin-Day* of the Term, and shall be a *Judgment* from that Time; but a *Judgment* in the King's Bench carries its Relation to the first Day of the Term only. *Cro. Car. 102. pl. 2.* the Case of *Stamford and Cooper.*

Therefore if a *Verdict* be of *Easter-Term*, and before *Judgment* the Plaintiff dies, yet says my Lord Chief Justice *Holt*, this shall not obstruct the Entry of the Judgment; for as to the Statute of *Frauds and Perjuries*, that only requires the Time of signing the Judgment to be mark'd on the Roll, and that is only for the Benefit of Purchasers; for if *Judgment* be signed in the Vacation, yet it is entred as of the Term before, and none but a Purchaser shall be admitted to say it was sign'd at another Time; but it must be entred within

within two Terms after it's being signed. Common
Pleas.
Duke of Norfolk's Case. Farresly 30.

So it was held in *Doctor Woodward's Case*, in the same Book 2. in *Pas.* the first of *Queen Anne*, that if a Man gives a Warrant of Attorney in the *Vacation*, to give Judgment as of *last Term*, his Death does not determine the Warrant, because the Party was alive when the *Judgment* is suppos'd to be given.

But if a *Feme Sole* gives a Warrant of Attorney, and afterwards marries, that is a Revocation of the *Warrant of Attorney*, and Judgment cannot be entred up thereon, as reported in *Salk.* 399. of *Pas.* the 9th of King *William* the Third, but in *M.* of King *William*, reported in the same Book, 400. the Court would not set aside such Judgment upon Motion, but left them to their Writ of Error.

By the Statute of *Frauds and Perjuries*, of 29 *Car.* 2. cap. 3. no *Judgments* shall bind Purchasers but from the Time of the Signing, and the Time of Signing must be mark'd on the Roll.

By 4 & 5 *W. & M.* the respective Clerks were to docquet Judgments, under the Penalty of one hundred Pounds.

And a Judgment not docquetted, is not to affect a Purchaser or Mortgagee, or to

Common Pleas. have any Preference against Heirs, Executors or Administrators; and this Act was made perpetual by the Act of the 7th and 8th of King *William* the Third, *cap. 26.*

There cannot be a Motion for a *new Trial* after a Motion in *Arrest of Judgment*, tho' there may be the Latter after the Former has been tried.

In the *Kings Bench* there must be four Days exclusive between the Day in Bank, and the Signing the *Judgment*, the Case of *Clerk and Rowland*; and in that Case it is said, that where the *Verdict* or *Inquest* is the last Day of the Term, tho' there can be no Motion in Arrest of Judgment, yet there may be a *Writ of Error*, and this Time is allowed for these Purposes; and therefore the Plaintiff ought to give a Rule, unless Cause be shewn to the contrary within four Days, and he is not to sign Judgment till the fifth Day. *Modern Cases in Law and Equity*, Martin and Henriques, 237. 5 *Mod.* 205.

A Judgment by Default is not to be impeached where the Party makes a *Defence* upon the Writ of *Inquiry*. *Mod. Cases in Law and Equity*, 289. *Paterfon* and *Dyer*.

If *Judgment* be given upon *Terms*, the Court will take Notice of 'em if they are
precedent

precedent, but otherwise if they are *subse-* Common
quent. *M. 10 W. 3. Salk. 400.* Pleas.

Upon Payment of *Costs* the Court will set aside a *Judgment* by *Default*, tho' it be regularly Signed, if the Plaintiff has not lost a *Trial*. *Mich. 2 Ann. 1 Salk. 402.*

Pas. 4 of Queen Anne. 'Tis said the Court will not refer a *Judgment* to the Master for Irregularity after a *Writ of Error* brought. *1 Salk. 402.*

If a *Judgment* for a Defendant be reversed in the *Exchequer Chamber*, that Court shall give the new *Judgment*; but otherwise if on a *Demurrer*, because they cannot award a *Writ of Enquiry*. *1 Salk. 403.*

But if a *Judgment* be given in the *Kings Bench* by *Original* for the Defendant, and that *Judgment* is reversed in the *House of Lords*, they, and not the Court of *King's-Bench* must give the new *Judgment*; for the Court of *King's Bench* having given *Judgment* on the *Original*, have executed their Power. *ib.*

As hath been herein before mentioned, where the Plaintiff or Defendant dies, after interlocutory *Judgment*, by the Statute of 8 and 9 of *K. W.* a *Scire facias* may issue. But Care must be taken how you enter that *Judgment*, for in *Salk. 42.* in

Common
Pleas.

the Case of *Weston and James*, the Court were inclined to be of Opinion, that the Judgment should not be, that the Plaintiff should recover against the *Intestate*, but against the *Administrator*.

And *Note* ; Where the Plaintiff as Executor or Administrator, sues out such *Scire facias*, the Defendant cannot plead to that *Scire facias* Matter to avoid the Action, but only in Arrest of the Judgment ; because the Executor or Administrator shall do no more to the *Scire facias* than the Testator or Intestate could have done to the Judgment before. *Smith and Harnon*, 1 *Salk.* 315.

An Action of *Debt* lies not in an inferior Court, on a Judgment in *B. R.* *Cumb.* 220.

If *Trover* be brought against two, and Judgment be for the Plaintiff as to one Defendant, and for the other Defendant against the Plaintiff, the Plaintiff cannot have Judgment. *Kiffin's Case*, *Cumb.* 310.

One cannot move in Arrest of Judgment before the *Postea* is brought into Court ; and in the *King's Bench* the *Postea* is in the hands of the Plaintiff's Attorney, and therefore the Defendant must move for a Rule to bring it in ; but in the *Common Pleas* the *Associate* keeps it till the four Days

Days in Court are expired for moving *Common Pleas* in *Arrest of Judgment*, and he attends with it upon Notice, and a Fee of 6 s. 8 d. *Modern Cases* 24. *Wood and Shepherd. Mich. 10. Anna.*

If a Rule be for *Judgment* to stay till the Court be further moved, and the Court is divided, there needs no further Rule for *Judgment*; but if it be upon an *Argument*, or a *Curia advisare vult*, and the Court be divided, there can be no *Judgment*. *Mod. Cases* 202.

But upon a Motion in *Arrest of Judgment*, where the Court is divided, the Plaintiff must have his *Judgment*.

If *Judgment* be not entered upon a Warrant of Attorney within the Year, it cannot be entered without Leave of the Court. *Mod. Cases* 212.

There is this difference between the *King's Bench* and *Common Pleas*, in entering up *Judgments* in Debt: In the *Common Pleas*, they say for a Debt of so much, and so much for *Damages* occasioned by detaining the same. And in the *King's Bench* they say, as well for a Debt and *Damages* occasioned by detaining the same, as also for *Expences and Costs*, &c. *Mod. Cases* 236.

The having a Rule for *Judgment* gives no Power to enter up the *Judgment* in an-

Common
Pleas.

other Term, as of the Term in which the Rule was granted; but such Judgment was set aside. *Hedges and Tempter B.R. 6. Mod. 191. Note*; There is no Rule in the *Common Pleas*, but the Plaintiff's Attorney enters it without. 3 *Salk.* 212.

The Entry of a Judgment for the Defendant after a *Verdict*, must be, *that the Plaintiff shall take nothing by his Writ, but for his false Claim shall be amerced, and that the Defendant shall be thereof for ever dismissed.* But if it be upon a Nonsuit, it is only, *for that the Plaintiff proceeds not on his Writ.* 4 *Mod.* 87. *Watson and Smith.*

A Judgment in an inferior Court was reversed, because it was *Ideo concessum est per Curiam*; whereas it ought to have been *Ideo consideratum est.* 1 *Cro.* 319. 3 *Bulst.* 92, 3.

And a Judgment was reversed because it was entered *Ideo consideratum ad eandem Curiam*, whereas it ought to have been *per eandem Curiam.* For it might be considered at the same Court; but it does not appear that it was the A& of the Court, and that it was considered at the same Court. *Hill.* 1649. See likewise 1 *Saund.* 74. 1 *Cro.* 319.

When

When a *Judgment* is once executed, the *Common* Goods are in the Custody of the Law, and *Pleas.* shall not be taken away by any *Exchequer* Process, or by *Commissioners of Bankrupts.*

3 *Mod.* 236.

Where there is a joint *Judgment* against two, and one dies before *Execution*, the *Scire facias* must be brought against the *Survivor*, and against the *Heir* and *Tenant* of the dead Man. *Carthew* 107.

A *Judgment* is an entire Thing, and cannot be *reversed* in Part, and *affirmed* in Part. *Carthew* 235. But otherwise if Part be by the *Common Law*, and Part by the *Statute.* 1 *Salk.* 24.

But where there are several *distinct* *Judgments* against one *Defendant*, one of those *Judgments* may be *reversed* as erroneous, and yet the other *Judgment* stand in Force; so where the *Damages* are several though the *Costs* are entire. *Hob.* 5.

Where it appears by the *Record* that the *Plaintiff* has no Cause of *Action*, the *Judgment* shall be *arrested.* 1 *Vent.* 310.

So where it appears that the *Money* demanded is not yet payable. 2 *Saund.* 107, 18. So for the *Uncertainty* of a *Verdict*, where it appears the *Jury* gave *Damages* for what was done after the *Action* brought. 2 *Saund.* 171.

Where

Common
Pleas.

Where a Writ of *Error* is brought upon a Judgment in the *Common Pleas*, for abating a Writ in a real Action, and that Judgment is reversed, the Court of King's Bench must give such Judgment as the *Common Pleas* ought to have given: 2 *Saund.* 256.

So the same is upon a Writ of *Error* of a Judgment in *Wales* or *Ireland*: 2 *Saund.* 257.

Judgment shall not be given for the Plaintiff, tho' the Plea be insufficient, if the *Replication* be insufficient, and thereby it appears that the Plaintiff has no Title. *Hob.* 14, 128.

Where the *Declaration* is good, and there is a Fault in the Defendant's Plea, tho' the Plaintiff hath joined Issue upon it, which is found against him, yet the Plaintiff shall have Judgment upon his good *Declaration*. *Cro. Car.* 25.

Tho' a Plea concludes with *petit judicium*, omitting *dampna*, yet the Court shall give Judgment for Damages as incident, but it is ill on a *Demurrer*: 2 *Lev.* 222, 345.

Judgment ought to be given *de bonis Testatoris* in Covenant, tho' the Breach be assigned to be committed by Executors. 1 *Saund.* 112.

If the Defendant moves in Arrest of Common Pleas Judgment, whereupon Judgment is stayed several Terms, and then the Plaintiff dies, the Court may give Judgment, *nunc pro tunc*, as of the first Term when it was moved. 1 Syd. 462.

If a final Judgment be entered without an Interlocutory Judgment, it is Error. Mod. Cases 7.

There is this Difference between a Judgment in *Trespass* and a Judgment in *Debt*, against several Persons; if one Judgment be for one Defendant in *Debt*, *quod querens nil capiat per breve*, or *per Billam*, that will avail the other Defendant, and the Plaintiff cannot have Judgment against him; but in *Trespass*, if one Defendant be acquitted, yet the Plaintiff shall recover against the others. 1 Saund. 217.

An erroneous Judgment may be pleaded by an Executor; for an erroneous Judgment till it is reversed is a good Judgment. Vaughan 94.

A *Retraxit* entered before Judgment for one of the Defendants, operates by way of Release as to the rest; but if it be entered after Judgment, it shall extend only to him for whom it is entered. 1 Rolls Rep. 233.

In:

Common
Pleas.

In *Trespass* against two, one pleads *special*, the other *not guilty*; and a *Demurrer* is joined upon the *special Plea*, and *Judgment* be for the Plaintiff, and a *Writ of Inquiry* of Damages awarded; the Plaintiff may take his *Judgment* for the Damages, and relinquish his *Action* as to the Issue; but let him take Care that the Entry of the *Judgment* be before the Entry of relinquishing his *Action*. 2 *Roll's Abr.* 104.

If a *Judgment* be obtained, but the Plaintiff does not take out *Execution* within a Year and a Day, he must revive it by *Scire facias* made out of Course; but if the *Judgment* be of seven Years standing, you must move for such *Scire facias*; yet if the Plaintiff gets *Executions* made out and returned, and enters them upon the Roll, there needs no *Scire facias*.

By the Course of the Court of *Common Pleas* now used, if the Plaintiff's Attorney gives a Rule to plead on *Monday*, he cannot sign *Judgment* 'till *Friday* in the *Afternoon*.

But if the Rule be given on *Friday*, he may sign *Judgment* on *Tuesday* in the *Afternoon*, having duly called for a Plea in Writing, so that *Sunday* is one of the Days.

But if a Rule be given to plead, and the Plaintiff's Attorney neglects to call for a Plea

Plea till after the Rules are out, the Defendant has till the Afternoon of the next Day to plead, (that is) the Defendant's Attorney cannot sign *Judgment* till the next Day in the Afternoon.

Common
Pleas.

Some few Observations on Executions.

THE usual Writs of Execution are either by *Fieri facias* on the Goods and Chattles; and this Writ originally lay at Common Law, and was not given by the Statute of *W. 2.* as falsely alledged in *Jacob's Law-Dictionary*, describing a *Fieri facias*; or by *Elegit*, whereby the Moiety of the Defendant's Lands are to be extended; or by a *Capias ad satisfaciendum*.

The *Elegit* indeed was given us by the Statute of *Westminster*, 2 cap. 18. And the *Capias* by the Statute of *Marlebridge*, cap. 23.

There may not be two Writs of Execution at one and the same Time subsisting; but if the Sheriff returns upon a *Fieri facias*, that the Defendant hath no Goods, or but so many whereby he could not levy the whole Debt or Damages, the Plaintiff may have another *Fieri facias* for the Residue, or he may have an *Elegit*, or he may have a *Capias* against his Body; but if

Common
Pleas.

if he once takes the Body, (which in Law is deemed the greatest Satisfaction, except the Money recovered,) he can neither have a *Fieri facias* or *Elegit*.

But if a *Capias ad satisfaciendum* be taken out, and the Plaintiff has no Effect of it; as if the Sheriff return a *Non est inventus*, tho' it is said in *Roll's Abr.* 904. that the Plaintiff may not have another Execution. The Law is otherwise, as in *Hob.* 57. in the Case of *Foster and Jackson*.

And *Hobart* held the Law clearly to be, that where the Party sues out an *Elegit*, and can have no Effect of it, he may resort to another Execution. *Hob.* 57.

If a Man died in Execution, his Executors were no further chargeable. *Hob.* 56, 7, 8, 9. before the Statute of 21 *Ja.* 1. cap. 24.

If upon an *Elegit* there are no Lands; but only Goods, which are not enough, the Plaintiff may have a *Capias* for the Residue; for it is in it's Effect but a *Fieri facias*, tho' the Word is *Elegit*. *Hob.* 58.

Note, this Case is best reported in 6 Mod. 290. 1 Mod. 188. A *Fieri facias* abates not by the Plaintiff's Death, but the Sheriff must go on to execute his Writ, Clerk and *Withers*. *Mich.* 3. *Annæ Salk.* 322. *Hill* 10 *George*, Mod. Cases in Law and Equity, 225.

A Writ

A Writ of Error is a Superfedeas from the Time of the Allowance; but if the Writ of Execution be once executed, it may be returned. *Salk. 322. Perkins and Wolluster.*

Common Pleas.

If on a *Fieri facias* all the Money is not levied, the Writ must be returned before a second Execution can be made out, because the second is grounded upon the Deficiency that appears in the first. *Oviat and Vyner, Salk. 318.*

An Execution was taken out against a Person in his Life-time, and executed on his Goods after his Death, and held to be good without a *Scire facias*. *Mod. Cases in Law and Equity. 225.*

It is a good Return to a *Fieri facias*, for the Sheriff to say he has levied the Goods, and that they remain in his Hands for want of Buyers; and if he continues in his Office, you issue out a *Venditioni exponas*, and if he does not do it, then a *Distringas* directed to the Coroners to distrain the Sheriff to sell; for by that Writ he is compellable to sell; if he is out of his Office, you issue out a *Distringas* to the new Sheriff, to distrain the old Sheriff to sell; whereby he is compellable under the Penalty of forfeiting Issues to the Value of the Goods: *6 Mod. 295, 296.*

The

Common
Pleas.

The Sheriff to execute a Writ of *Fieri facias*, is not to break open the outer Door of the House; but if he does, the Execution, 'tis said, will be good, only the Sheriff will be liable to an Action of *Trespass*. 5 Co. 93. So 'tis said the Sheriff may not break open the House, nor pull the Latch and open the Door, if it be shut, to execute a Writ of *Capias ad satisfaciendum*; but if he does, and arrests the Party, the Arrest will be good; but the Sheriff may be punished for the Abuse of his Authority. *Hob. 1. 5 Co. 91. Dy. 65, 214.* But he may break open the inner Doors to execute his Execution. *Cumb. 327. Palmer 53, 4.*

It was said by *Pollexfen*, Chief Justice, in the Case of *Bealy and Sampson*, 2 *Ven. 95.* that the Sheriff cannot deliver the Defendant's Goods to the Plaintiff in Satisfaction, but they must be Sold, and there needs no Appraisalment, as there must be upon an *Elegit*.

It was held in 2 *Saunders 47.* the Case of *Wilbraham and Snow*, that the Sheriff hath such a Property in the Goods taken in Execution, that he may maintain an Action of *Trespass* or *Trover* for them.

Where the Sheriff upon a *Fieri facias* returns, that he had seized the Goods of such a Value, which was less than the Debt;

Debt; and that they were rescued, and that the Defendant had no other Goods; the Plaintiff cannot sue out an Execution for any more than for the Residue. 2 Saund. 344.

Common
Pleas.

And where the Sheriff suffers Goods taken in Execution, return'd to be of such a Value, to be rescued out of his Hands, a *Scire facias* lies for the Plaintiff to have Execution against him, according to that Value. 2 Saund. 344, 5.

A *Venditioni Exponas* cannot be awarded, if it appears that the Goods are out of the Hands of the Sheriff. 2 Saund. 344.

Where you sue out a new *Fieri facias*, or a *Testatum*; you cannot do it till the former is filed and returned, but you need not stay till the Appearance Day of the Return for the Teste of the new *Fieri facias*, but it may be tested on the Return-Day of the first Writ. Jones 200.

If he who is Plaintiff in an Execution of Lands, releases one Acre of the Execution, all is extinct; because the Execution is entire. 1 And. 266.

On a *Fieri Facias* against one Partner, the Sheriff may take the Goods of both, and the Vendee shall have a Moiety in common with the other. Cumberb. 217. Pope and Homan.

Upon

Common
Pleas:

Upon a *Fieri Facias* against an Administrator, the Sheriff may sell an Estate for the Life of another. *Cumberb. 191. Johnson and Street.*

A *Fieri Facias* can't be continued upon the Roll longer than a Year, without a new Writ. *Cumberb. 346.*

On a *Fieri Facias* where the Party has two Gowns, the Sheriff may take one of them. *Cumberb. 356.*

An Execution once begun shall proceed, if there be no Irregularity; and where the Party brings an *Audita Querela* on a Deed which is confess'd, tho' a *Supersedeas* be awarded; yet that shall not prevent the Sale of the Goods by the Sheriff. *Cumb. 388, 389.*

If the Sheriff has two *Elegits* against the same Person, at one and the same Time, he may deliver a Moiety of his Land to one of them, and then to the other he is to deliver a Moiety of that which is left. *1 Cro. 482.*

And upon an *Elegit*, the Sheriff ought to deliver Possession, by Meets and Bounds, or otherwise the Writ may be quashed. *1 Vent. 259.*

If two Executions are deliver'd to the Sheriff on the same Day, he is bound to give Preference to that which was first deliver'd;

mini- liver'd; but if in Fact he executes that first Common
e for which was last deliver'd, and makes a Sale Pleas.
ohn- of the Goods; the Vendee hath a good
pon Title, and the Party that sued out the first
at a Execution, is intitled to an Action against
the Sheriff. *Carthew* 420. *Smallcombe*
against *Buckingham* and others. *Salk.* 325.

has Where a Judgment is had against two,
e of and one dies before Execution, the *Scire*
eed, *Facias* ought to be brought, as well against
the Survivor, as against the Heir and Ter-
Deed tenants of the Deceased; and my Lord
r be Chief Justice *Holt*, as 'tis reported, said,
the as this was a judicial Writ, it might be
fram'd upon the subject Matter, and pro-
posed the Form to be thus:

That the Writ should be against the Sur-
vivor, to shew Cause why the Plaintiff
should not have Execution against him *de*
bonis & Catallis, and of the Moiety of his
Lands, and against the Heir and Terte-
nants of the Deceased; to shew Cause, why
the Plaintiff should not have Execution of
the Moiety of the Lands of the Deceased,
without mentioning the Goods. *Carthew*
107. *Pantan* and the Tertenants of *Hall*.

A Prisoner is to be charg'd in Execu-
tion within two Terms after Judgment ob-
tain'd. *Modern Cases in Law and Equity*,
227, 236.

A Writ

Common
Pleas.

A Writ of Error by two, and one dies pending the Writ, an Execution may be sued out without a *Scire Facias*. *Modern Cases in Law and Equity*, 108. 225. *Penrice and Brace*.

It is said in the Case of *Shaw and Cutters*, 1 Cro. 851. that where two are convicted, the Taking of one, and his Death, is no Discharge of the other.

Upon fresh Pursuit of a Prisoner escaped, the Sheriff may break open the House, and if he arrests the Defendant looking out of the Window, he may break open the Door to take him. *Palmer* 53.

Where the Sheriff permits the Defendant to escape that is in Execution, by the Consent of the Plaintiff, he shall never take him again. 1 *Show.* 174.

By the Act of 21 *Ja. c.* 24. notwithstanding the Party's dying in Execution, the Plaintiff may have an Execution against his Lands, Goods and Chattles.

By an Act of the 8th and 9th of King *William* the Third, *cap.* 27. if a Prisoner in Execution escapes, any Creditor, at whose Suit he stands charged, may retake him by a new Execution.

Before the Act of the 29th of *Charles* the Second, the Goods were bound at the *Teste* of the Writ, but by that Statute they are

dies are bound only from the Time of the De- Common
y be livery to the Sheriff; but Lands are bound Pleas.
ndern from the Day of the Judgment.

Pen-

Writs of Scire Facias.

*A Scire Facias upon a Judgment against an
Executor after a Year and a Day.*

GEORGE the Second, by the Grace of God,
of Great Britain, France and Ireland, King,
Defender of the Faith, &c. To the Sheriff of
Norfolk, Greeting. Whereas *John Adseed*,
lately, (that is to say) in the Term of St. *Mi-
chael*, in the fifth Year of our Reign, in our
Court, before Sir *Robert Eyre*, Knt. and his
Brethren, our Justices of the *Common Bench*
at *Westminster*, recovered against *Philip
Barnsley*, late of *Diss* in your County, *Ho-
sier*, as well a certain Debt of Eighty Pounds,
as also fifty Shillings, which in our same
Court were awarded to the said *John* for his
Damages which he had sustained, by reason
of detaining the said Debt, as by the Record
and Proceedings thereof now remaining in our
same Court, before our Justices at *Westmin-
ster*, may manifestly appear; nevertheless
Execution of the said Judgment yet remains
to be made, as we have receiv'd Information
from the said *John*. And because we are wil-
ling that those things which are Just and Right
should have a due Execution; therefore we
com-

Common
Pleas.

command you, that by honest and lawful Men of your Bailiwick, you cause the said Philip to know, that he must be before our Justices at Westminster, on the Oclave of St. Hillary, to shew if he has, or knows of any Cause, why the said John ought not to have an Execution against him for the said Debt and Damages, according to the Form and Effect of the said Recovery, if it shall seem Expedient for him so to do. And have you there the Names of those Persons by whom you shall so cause it to be known to him; and this Writ. Witness Sir Robert Eyre, Knt. at Westminster, the 28th Day of November, in the sixth Year of our Reign.

There is no Difference if it be in Case, only in stead of, as well a certain Debt of eighty Pounds, &c. you say eighty Pounds, which in our same Court were awarded to the said John, for his Damages which he had sustained, by reason of several Promises made, and not perform'd by the said Philip to the said John, as by the Record, &c. as in the former, only afterwards where it is above-mentioned the said Debt and Damages, the Word Debt must be omitted, and only say, why the said John ought not to have an Execution for his said Damages, &c.

A Scire

Common
Pleas.

*A Scire Facias against an Executor, upon
a Judgment against the Testator.*

—*GEORGE* the Second, &c. Whereas *Robert Gibbs*, Esq; lately in our Court of Common Pleas, in the Term of St. *Hillary*, in the fifth Year of our Reign, before Sir *Robert Eyre*, Knight, and his Brethren, our Justices of our Common Bench at *Westminster*, by Consideration of the same Court, recovered against *Edward Batwell*, late of London, Esq; heretofore called *Edward Batwell*, of London, Esq; as well a certain Debt of 80*l.* as 6*l.* which in our same Court were awarded to the said *Robert*, for his Damages which he had sustained, by reason of detaining of the said Debt, whereof the said *Edward* was convicted, as by the Record and Proceedings thereof now remaining here in our Court at *Westminster* aforesaid, may manifestly appear: Nevertheless Execution of the said Judgment remains yet to be made; and the said *Edward* is dead, as we have received Information from the said *Robert*; and because we are willing that those Things that are Right and Just should be done, and should have a due Execution be given thereon; therefore we command you, that by honest and lawful Men of your Bailwick, you cause *John Batwell*, Esq; Executor of the said *Edward*, that he be here in three Weeks from the Day of St. *Michael*, to shew if he hath, or knows of any Cause, why the said *Robert* ought not to have Execution against him the said *John*, for

I

the

Common
Pleas.

the said Debt and Damages, of the Goods and Chattles which were of the said *Edward*, at the Time of his Death, in his Hands to be administered, if it shall seem *Expedient* to him so to do. And have you there the Names, &c. (as in the former).

A Scire Facias upon a Judgment in Ejectment for the Plaintiff against the Defendant, who entred into the Lands after the Death of the Defendant in Ejectment.

GEORGE the Second, &c. To the Sheriff of *Middlesex*, Greeting. Whereas *Edward Corbet*, heretofore, (that is to say) in *Easter Term*, in the 4th Year of our Reign, before Sir *Robert Eyre*, Knight, and his Brethren, our Justices, of our said Court at *Westminster*, by the Consideration of the said Court, recovered his Term of and in three Messuages, with the Appurtenances, in the Parish of *St. Giles* in the Fields, in the County aforesaid, against *Humphrey Weld*, late of *London*, Esq; which *William Atwood*, on the first Day of *January*, in the third Year of our Reign, had demised to the said *Edward*, for him and his Assigns, to have and occupy the same, from the 25th Day of *December*, then last past, unto the full End and Term of five Years, from thence next following, and fully to be compleat and ended, which is not yet past. And for that the said *H.* drove out and removed the said *Edward* from his Possession, and ejected him out of his said Farm, and also eleven Pounds, which

which in our same Court were awarded to the Common
 said *Edward*, for his Damages which he had Pleas.
 sustained, by reason of the Premises; whereof
 the said *Humphrey* is convicted, as by the Re-
 cord and Proceedings thereof, now remaining
 in our said Court may manifestly appear:
 Nevertheless Execution of the said Judgment
 yet remains to be made; and the said *Hum-
 phrey* is dead, and one *Nicholas* Earl of *Car-
 linford*, and *Mary* his Wife, have entred into
 the said Messuages, with the Appurtenances,
 and held the same, contrary to the Form of
 the said Recovery, as we have received Infor-
 mation from the said *Edward*. And because
 we are willing, that those Things that are
 rightly done in our Court, should have a due
 Execution; therefore we command you, that
 by honest and lawful Men of your Bailiwick,
 you cause it to be known to the said Earl of
Carlinford, and *Mary* his Wife, that they must
 be here in fifteen Days from the Day of *St.
 Martin*, to shew Cause, if they have, or
 know of any thing to say for themselves, why
 the said *Edward* should not have his Execu-
 tion of the said Term unexpired, according to
 the Form of the said Recovery, if it shall
 seem to them Expedient so to do. Witness,
 &c. (as in the former.)

Adjudged by the Court, that this *Scire Fa-
 cias* would lie according to the Case of *Jack-
 son* and *Ford*, and others in *Hill. 11 W. 3.*

Scire Facias against the late Sheriff of Dorset, for not returning the Money levied by a Fieri Facias.

GEORGE the Second, &c. To the Sheriff of Dorsetshire, Greeting. Whereas we lately commanded our late Sheriff of Dorset, that he should cause to be made of the Goods and Chattles of J. J. late of, &c. otherwise called, &c. in his Bailiwick, as well a certain Debt of twenty Pounds, which J. B. here in our Court, before our Justices of the Common Pleas, recovered against him; as also twenty Shillings, which here in our same Court were awarded to the said J. for his Damages which he had sustained, by reason of detaining the said Debt, whereof the said J. J. is convicted; and that he should have the Money there, on the Morrow of All-Souls, now last past, to render to the said J. B. for the Debt and Damages aforesaid, at which Day the said Sheriff return'd, that by Virtue of the said Writ, he had caused to be made of the Goods and Chattles of the said J. J. in his Bailiwick, the said Debt and Damages; and that he had there the Money to render for the said Debt and Damages: Nevertheless the said Sheriff had not there the Money to render to the said J. B. for the said Debt and Damages, according to the Form of the said Writ, as we have received Information from the said James. And because we are willing that those Things which are rightly done in our Court, should be

be brought in Execution; we command you, Common Pleas. that by honest and lawful Men of your Bailiwick, you cause the said *Richard*, our late Sheriff of the said County of *Dorset*, to know, that he must be here in *fifteen Days from the Day of the Feast of Easter*, to shew if he knows of, or hath any Thing to say for himself, why the said *James* should not have an Execution against him for the said Debt and Damages recovered by him the said *R.* in Form aforesaid, to be levied of the proper Goods and Chattles of the said *Richard*, (and then, as in the former.)

A Scire Facias upon a Recognizance against Bail in the Common Pleas.

GEORGE the Second, &c. To the Sheriff of *Middlesex*, Greeting. Whereas *Sabrian Cole* of *Bishopsgate-streer, London*, Merchant, heretofore, (that is to say) in the Term of the *Holy Trinity*, in the fifth Year of our Reign, in our Court of Common Pleas, before Sir *Robert Eyre*, Knight, and his Brethren, our Justices, of our said Court of Common Pleas at *Westminster*, acknowledged himself to be indebted to *Thomas Sparks*, in the Sum of one Hundred and twenty Pounds, of lawful Money of *Great Britain*; which said Sum of one Hundred and twenty Pounds, the said *S. C.* for him and his Heirs, willed and granted to be made of his Goods and Chattles, to be levied to the Use and Behoof of the said *Thomas*, under this Condition, That if it should happen that Judgment should be given

Common
Pleas.

ven for the said T. against the said R. in the same Court here, in a certain Action of *Trespass upon the Case*, to the Damage of the said Thomas sixty Pounds, prosecuted by the said T. in the same Court here against the said R. then he the said R. should satisfy to the said Thomas all his Damages which should be awarded to him here in this Court, in the said Action of *Trespass upon the Case*, or should render his Body in Execution of such Judgment, to our Prison of the Fleet: And altho' the said Thomas in the Term of St. Michael, in the said fifth Year of our Reign, in our same Court of *Common Pleas*, before the said Sir Robert Eyre, Knight, and his Brethren, our Justices of the said *Common Pleas* at Westminster aforesaid, by the Consideration of the same Court, recovered against the said R. Forty-six Pounds ten Shillings, which were awarded to the said Thomas now in our same Court, for his Damages which he had sustained by reason of the said *Trespass upon the Case*, whereof he is convicted, as by the Record and Proceedings thereof now remaining in our same Court may manifestly appear. Nevertheless the said Richard hath not made Satisfaction to the said Thomas for his said Damages, nor rendered his Body to our Prison of the Fleet, in Execution of such Judgment, according to the Form of the said Recognizance, as we have received Information from the said Thomas. And because we are willing that those Things that are rightly done should be brought to a due Execution, Therefore we command you (*as in the former.*)

A

POCKET COMPANION.

175

Common
Pleas.

*A Scire facias by Executors against
Executors.*

GEORGE the Second, &c. to the Sheriff of *Middlesex*, Greeting. Whereas *W. M.* Citizen and Mercer, &c. and *A. C.* Widow, Executors of the Testament of *R. S.* late Citizen, &c. lately called *R. S.* &c. and *A. S.* his Wife, heretofore in our Court of *Common Pleas*, (that is to say) in *Michaelmas* Term, in the fifth Year of our Reign, before Sir *Robert Eyre*, Knight, and his Brethren, our Justices of the said Court of *Common Pleas*, by the Consideration of the same Court, had recovered against *J. M.* late of *S. &c.* Executor of the last Will and Testament of *J. M.* Gent. as well a certain Debt of forty Pounds, to be levied of the Goods and Chattles of the said *W.* as also forty Shillings which in our same Court were awarded to the said *W.* and *A.* for their Damages which they had sustained by reason of detaining the said Debt, to be levied of the Goods and Chattles of the said *W.* if he should have so many; and if not, then the Damages aforesaid, to be levied of the proper Goods and Chattles of the said *J. M.* Whereof he is convicted, &c. as by the Record and Proceedings thereof, here remaining in our said Court of *Common Pleas*, manifestly may appear: Execution nevertheless of the Judgment yet remains undone; and the said *A.* after the said Judgment was so given, took to Husband one *R. H.* as we have received Information from the said *R.* and *Anne*. And because, (as in the former).

Of Proceedings by and
against Attornies.

Note ; by the Statute in the third Year of his present Majesty, *cap. 6.* no Attorney can sue his Client for Business done for him, till one Month after the Delivery of his Bill. And I submit it whether it is safe, That the Teste of the *Attachment* be before the Bill delivered, for that is the Day by Construction of Law, the Writ was sued out. And as that is *quasi* an Original, the Defendant will be intituled to Oyer of it; and if it appears that the Teste of that *Attachment* be before the Bill deliver'd, it was consequently before he had a Right to bring his Action.

The Form of the Attachment is thus.

GEORGE the Second, &c. To the Sheriff of Norfolk, Greeting. Attach *A. B.* and *C. D.* (*for as many as are in the Writ*) so that you have them before our Justices at *Westminster*, on Monday next after the Octave of *St. Hilary*, to answer to *John Cock*, Gentleman, one of the Attornies of our Court of Common Bench, according to the Liberties and Privileges of our Court, for such like Attornies of the same Bench, used and approved of
in

in the same, for so long a Time as the Memo-Common
ry of Man is not to the contrary, in an Ac- Pleas.
tion of *Trespass upon the Case*; And have you
there this Writ. Witness, &c.

Note; all Proceedings for and against
Attornies must be returnable at a Day
certain, (that is to say) on the Appearance
Day of every Return, naming the Day.

*The Form of a Declaration for an Attorney
is thus.*

London. John Doe, late of *London*, Cut-
ler, was attach'd by his Majesty's Writ of Pri-
vilege, issuing out of this Court, to answer to
Matthew Isaack, Gentleman, one of the At-
tornies of his said Majesty's Court of Com-
mon Bench, according to the Liberties and
Privileges of the said Bench, Time out of
Mind used and approved of, in an Action of
Trespass upon the Case: And whereupon the
said *M.* complains, That whereas, (*So go on
with the Declaration to the End, inserting
underneath, in this Manner,*)

The Pledges for the, *John Doe*.

Prosecution are, *Richard Roe*.

A Certiorari for an Attorney of this Court.

GEORGE the Second, &c. To the Mayor,
Aldermen, and Sheriffs of *London*, Greeting.
We command you that you have before our
Justices

Common
Pleas.

Justices at *Westminster*, on *Monday next*, after the *Octave of St. Hillary*, all, and all manner of Causes, Complaints and Demands, levied, sued out and depending before you, or either of you, against *Matthew Isaack*, one of the Attornies of our Court of Common Bench, together with the Days of levying the same; so that our said Justices may upon viewing those Causes, be able to do full and complete Justice to the said *Matthew Isaack*, according to the Liberties and Privileges for such Attornies, Time out of Mind used and approved of in our Court of Common Bench; And have you there this Writ. Witness, &c.

The Form of a Superfedeas for an Attorney.

GEORGE the Second, &c. To our Justices assigned to hold Pleas before us. It having been made manifest to us, on the Behalf of *Matthew Isaack*, one of the Attornies of our Court of Common Bench, That whereas he is an Attorney of our said Bench, and is prosecuting and defending divers Affairs and Suits of many of our Liege People, as their Attorney of the same Bench; and the said *Matthew*, and all other Attornies of the said Bench, while they are so prosecuting and defending any Affairs in the said Bench, should, and ought to be under our Protection, according to the Liberties and Privileges of our said Court of Common Bench, Time out of Mind there used and approved of: Nevertheless, *William Strickland*, Pedlar, not being ignorant of the Liberties and Privileges of our said Court

Court of Common Bench, sued out, and pro-Common-
secuted in our Court before us, a certain Bill Pleas,
for a Trespass committed by the said *Mat-*
thew against the said *William Strickland*, as
he asserted at *Rippon* in our County of *York*,
in Contempt of our said Court of Common
Bench; and to the great Damage of the said
Matthew, and several of our Liege People
whose Attorney he is, as we are informed.
Therefore we command you, that you to-
tally cease from proceeding upon whatsoever
Plaints and Pleas are depending in our Court
before you, against the said *Matthew*, (Pleas
of Freehold, Felonies and Appeals only ex-
cepted) informing the Parties in the said
Complaints and Pleas on our Behalf, that
they may prosecute their Plaints and Pleas in
our Court, before our Justices of the Common
Bench, if they think fit. Witness, &c.

*A Writ of Privilege for an Attorney of
the Common Pleas, being sued in the
Mayor's Court of the City of London.*

GEORGE the Second, &c. To the Mayor,
Aldermen, and Sheriffs of *London*, and every
of them, *Greeting*. Whereas according to the
Custom of our Court of Common Bench, hi-
therto used and approved of, the Attornies of
our said Court of Common Bench, ought not,
nor have they for Times past been used to be
compelled to answer before any of our Justi-
ces or Officers, or any other secular Judges
whatsoever, except before our Justices of the
said

*Officina
Brevium,
164.*

Common
Pleas.

said Common Bench, upon any Pleas, Plaints or Demands which do not particularly relate to us, (Pleas of Freeholds, Felonies and Appeals excepted) And we have lately received Information, by the great Complaint of *Matthew Isaack*, one of the Attornies of our said Court of *Common Bench*, that several ill-disposed Persons intending to disquiet the said *Matthew Isaack*, have impleaded him by divers Plaints levied in our Court before you, which do not relate to us; whereby he is unable to attend his said Office as an Attorney, upon several Affairs and Suits depending in our said Court of Common Bench; which if it is permitted, will manifestly take away, and be to the Derogation and Diminution of the Jurisdiction of our said Court of Common Bench, and the Liberties and Privileges thereof. And because we are willing that the Jurisdiction, Privileges and Customs, for so long Time used and approved of, in our said Court of Common Bench, should be inviolably observed; *we command you*, and every of you, that you, and every of you desist from proceeding in all, and singular the Plaints and Pleas whatsoever, depending in our Court, before you or either of you, against the said *Matthew Isaack*, by whatsoever Name he shall be therein reputed, (Pleas of Freeholds, Felonies and Appeals only excepted) altogether informing the said Parties, Plaintiffs in the said Complaints, that they may prosecute their said Complaints before our Justices of the said Court of *Common Bench*, if they think it expedient for them so to do. Witness, &c.

The

Common
Pleas.

The Method of proceeding against an Attorney, is to draw the Declaration, and ingross it on a double Penny Stamp on Parchment, beginning and ending it in this Manner.

To the Justices of the Common Bench of our Sovereign Lord the King.

Richard Williams, by John Cock his Attorney, complains of Matthew Isaack, one of the Attornies of the Court of Common Bench, of our Sovereign Lord the King, present here in Court in his proper Person. For that whereas, (so go on with the Declaration, to the Words,) and whereupon the said Richard Williams declares he is injured and endamaged to the Value of forty Pounds. Adding the Words, And therefore he prays Relief, &c. instead of the Words, And therefore he brings his Suit, &c.

And the Reason of this Distinction is, because where there is a Declaration, there hath been a Suit before commenced by Process, to which the Party hath appeared; but in this Case of a Bill filed against an Attorney, there is no Suit, but the Bill is only filed with an Intent to compel an Appearance, and what the Plaintiff prays therefore by his Bill, is only to be relieved in

Common
Pleas.

in that Instance, and is not properly a Suit till there is an Appearance by the Attorney to the Bill.

The Method of proceeding therefore is, The Plaintiff's Attorney delivers this Bill to one of the Criers of the Court, who calls such Attorney by his Name, and solemnly proclaims aloud, that if such Attorney does not appear to such Bill, he will be forejudged. The Meaning of which forejudging is, that he will be struck out of the Roll of Attornies; and when the Crier hath so called such an Attorney, the Bill is delivered to the Secondary, who gives a Rule thereupon, signifying, that if such an Attorney does not appear, he will stand forejudged; and then this Bill is to be carried to the Prothonotary's Office, and there filed and entered in a Book kept for that Purpose. And if the Attorney does not appear in four Days from the Rule given, then the Bill is entered upon a Roll of that Term, and carried to the Clerk of the Warrants and Inrollments; and he thereupon strikes such Attorney out of the Roll.

Note; *There must be Pledges added in this Manner.*

The Pledges for the } John Doe,
Prosecution are } Richard Roe,
The

The Form of the Entry of which Forejudger Common Pleas.
is as follows.

You first enter the Bill with a *Memorandum* in this Form.

Be it remember'd, that on the 23d Day of October, this same Term, *Richard Williams* came here into this Court by *John Cock* his Attorney, and exhibited to the Justices of our Sovereign Lord the King, his Bill against *Matthew Isaack*, Gent. one of the Attornies of the *Common Bench*, of our Sovereign Lord the King, personally present here in Court; the Tenor of which Bill follows in these Words, (that is to say) to the Justices of our Sovereign Lord the King, *J. Richard Williams*, by *John Cock* his Attorney, complains of *Matthew Isaack*, one of the Attornies of the *Common Bench* of our said Sovereign Lord the King, personally present here in Court; for that whereas, &c. and so go on with the Bill, ending with the Words, and thereon he prays Relief, &c. The Pledges for the Prosecution are *John Doe*, and *Richard Roe*. Whereupon the said *Matthew* being solemnly called came not; therefore he stands forejudged from exercising his Office of Attorney of this Court, for his Contumacy, &c.

There is another Entry in Mich. 13 H. 7.
 Roll 307. in this Form.

Middlesex. — Be it remember'd, that the eighth Day of November, this same Term,
 one

Common
Pleas.

one *Rowland Brigg*, one of the Attornies of the *Common Bench*, was solemnly called here by the Court, to appear and answer to certain Matters, Offences, and Impositions done by him, as it is said, and here in this Court charged upon, and objected against him. Therefore the said *Rowland* is for his Contumacy, forejudged from exercising his Office of Attorney of this Court, until, &c.

By which, &c. is understood, until he shall come into this Court in his proper Person, and clear himself from the above-mentioned Offences and Impositions above charged upon him; and from his Contumacy in not appearing when he was solemnly called, as above-mentioned.

There is an Entry in *Rastall* 96 a. for the restoring an Attorney forejudged, upon his Payment of six Shillings and eight Pence; and his Offence was, for his appearing for the Defendant without a Warrant of Attorney; and the Form of that Entry is in this manner, viz.

After the Words, which constitute the Forejudger, the Entry begins,

Afterwards, (that is to say) on the 30th Day of *October*, in the 15th Year of the Reign of our Sovereign Lord the King, the said *W.C.* personally came here into this Court, and having made

made Payment of his Fine of six Shillings and eight Pence, to our Sovereign Lord the King, by reason of the Premises, the same being this Instant paid into this Court into the hands of K. K. to buy a Chest, therein to put and keep the Rolls and Records of our Sovereign Lord the King; and that the said W. C. prays that he may be thereof freed and discharged; and hereupon the said W. C. at his special Instance and Request made to the Justices here, is again permitted and restored to exercise his said Office as an Attorney of the Common Bench, and readmitted to that Office.

Mich. 15. H. 7. Rastall 96. l.

And by this Forejudger is meant, that he stands unprivileged by the Court, and may be arrested as any other Person.

It is very proper here to observe the Method of an Attorney's being restored, which is, when the Attorney hath made Satisfaction to the Plaintiff, or if he appears, and will controvert the Suit, he must summon the Attorney for the Plaintiff before a Judge, to shew Cause why he should not be restored, and on their attending the Judge, if it appears to him, that the Plaintiff hath had Satisfaction, or the Matter in Dispute is such, as the Attorney may be admitted to controvert it, he will make an Order to the Clerk of the War-

Common
Pleas.

Warrants and Inrollments, to replace him in the proper Roll of Attornies, who does it without any Entry whatsoever. But if such Attorney be arrested by any other Person, and he pleads his Privilege, and the Plaintiff replies that he is forejudged, and issue be taken thereon, it is then proper that this Entry be made; for his being forejudged is as much a Bar, and deprives him of his Privilege, with regard to others, as an Outlawry is a Bar for any other Person to take Advantage of, as well those that are Strangers, as those that are Parties to the Outlawry.

The Form of an Attachment against an Attorney.

GEORGE the Second, &c. to the Sheriff of London, Greeting. Attach *Matthew Isaack* one of the Attornies of our Court of *Common Bench*, so that you have him before our Justices at *Westminster*, on *Monday next after the Octave of St. Martin*, to make answer to us, of and concerning those Things which shall then on our Behalf be objected to him: And have you there this Writ. Witness *Sir Robert Eyre*, Knight, the 28th Day of *November*, in the 6th Year of Our Reign.

And the Reason why an Attachment is not to appear and make Answer to the Plaintiff

Plaintiff in the Cause, upon whose Application such Attachment was granted, but Common Pleas.

to answer to Us, which is to our Sovereign Lord the King, is, because it is for a Contempt of the Court of Justice; and the King being supposed by Law, to be the Fountain from which all Justice flows, therefore he must answer the Contempt to him; and the Fine which is imposed for such Contempt is the King's, and to be estreated into his Exchequer.

And no Rule is absolutely granted for an Attachment, but upon personal Service of the first Rule; therefore the Words of the Rule always were *super Notitiam hujus Regula fibi dand.*

When an Attorney is thus taken on an Attachment, he gives a Bail-Bond to the Sheriff, and at the Return of the Writ personally appears in Court, and then enters into a Recognizance to appear from Day to Day, till the Court shall determine concerning the Matters objected against him. And then upon Motion by his Council, the Court makes a Rule, that unless his Adversary exhibits Interrogatories against him in four Days from such Rule, he shall be discharged.

These *Interrogatories* must be filed with the Secondary of that Office where the Cause

Common
Pleas.

Cause is, and after such Attorney hath been sworn before a Judge to swear the Truth, he is examined by the Secondary, and the Tenor of his Examination is drawn by the Secondary; and thereupon, if the Prothonotary makes a Report that he is in Contempt, the Court commits him to the Fleet; or if he is reported Innocent, they discharge him. If he neglects to appear to be examined, or neglects attending the Court when he is directed to come, the Court will order his Recognizance to be estreated.

And Note; if he confesses any Thing material in his Depositions, there is no occasion for Witnesses, but you move on his Confession.

A Commitment to the Fleet after Judgment

And be the said (Defendant) amerced. Afterwards, (that is to say) on the 23d Day of January, in the sixth Year of the Reign of our Sovereign Lord George the Second, King of Great Britain, France and Ireland, Defender of the Faith, &c. the said C. (the Defendant) personally comes here into this Court; and hereupon the said (Defendant) is committed to his said Majesty's Prison of the Fleet, by reason of the Premises, there to remain till he shall from thence be discharged in due Form of Law.

Another

Common
Pleas.*Another in Discharge of Bail.*

Afterwards, (that is to say) on the 23d Day of January, then next following, the said (Defendant) personally comes here into this Court, and as well for his own Indemnity, as an Discharge of his said Bail, prays that he may be committed by this Court to his Majesty's Prison of the Fleet, by reason of the said Judgment, there to remain till he shall be from thence discharged in due Form of Law; that they the said Bail may be discharged from their said Recognizance. Whereupon the said *W.* (the Defendant) personally present here in this Court, at the Request of the said (Plaintiff) is committed to the said Prison in Execution for the said Debt and Damages, recovered in the Manner as above set forth, there to remain, until he shall from thence be discharged in due Form of Law; and the said Bail, (that is to say) *P. S.* and *W. R.* are by this Court entirely discharged from their said Recognizance in this Suit.

Of Proceedings by and against Infants.

An Infant is to prosecute a Suit by his Guardian, or best Friend, tho' the Term used is *Procbien Amy*, which is next Friend; but he cannot defend by such next Friend, but must defend only by Guardian, because the
Law

Common
Pleas.

Law supposes, that where he demands or sues for any thing, it is for his Benefit. And therefore the Law is not so watchful in that Call of the Person to take care of his Suit, as where he is to be defended, where he may sustain a Loss; for the Law is so careful, lest there should be any Prejudice done to the Infant, that it will not suffer any Person but a Guardian to defend for him, who may be called to an Account by the Infant, for his Management and Behaviour therein.

And therein there is this Difference, where an Infant brings an Action in his own Right and where in the Right and for the Benefit of another; for if he sues in another's Right as Executor or Administrator, it shall never be assign'd for Error, because it is supposed for his Benefit, however, that he can have no Loss thereby — but if in that Case Judgment be given against him, he himself may assign his suing by Attorney for Error, because of the personal Prejudice he receives thereby.

Yet if an Infant be join'd with others, in suing in the Right of another, the Action may be brought by Attorney, for they all make but one Person in Law. 3 Cro. 377.

But in all Cases where an Infant is Defendant, tho' it be in another's Right, and tho' join'd with others, he must sue by Guardian.

The

Common
Pleas.

The Form of an Admission in Court of a Prochein Amy, that is, of his next Friend, is thus,

London. ff. It is granted here by this Court, that *A. B.* Gentleman, and *C. D.* Gentleman, do jointly and severally prosecute, and sue for, and in the Behalf of *E. F.* (who is within Age, as his next Friends,) against *G. H.* of a Plea (or in an Action) of Debt, as the Case is.

The Form of an Admission by Guardian.

Devon. ff. *J. E.* who is within the Age of twenty-one Years, is admitted by the Court of our Sovereign Lord the King, before the King himself, by *T. W.* his Guardian, to defend all, and all Manner of Suits, Action and Actions depending in the same Court against the said *J.*

R. Price.

Which is signed by the Judge.

'Tis Time enough to admit such Friend, Guardian or Guardians, any Time before the Declaration is delivered, unless it be by special Original; but it must be before the Declaration delivered, because the Declaration must take Notice thereof thus,

Suffolk. *G. H.* late of *St. Edmunds-Bury* in the County of *Suffolk*, Woollen-Draper, was
at.

Common Pleas. attach'd to answer to *E. T.* of a Plea (or in an Action) of *Trespass upon the Case*. And whereupon the said *E. T.* by *A. B.* (who is admitted by this Court to prosecute for the said *E. T.* who is within Age) as the next Friend (or Guardian) to the said *E. T.* declares, That whereas, &c.

Admission of an Infant may also be by Commissioners, by Virtue of a *Dedimus* from the Curfitor of the County; and which when returned must be filed with the Curfitor, who makes you a *Mittimus* and Transcript thereof, which you enter on the Roll; 'Tis also said he may be admitted by a Judge at the Assizes.

Which *Dedimus potestatem ut supra*, is for the Commissioners to admit him *custodes* to answer the Plaintiff in the Action brought against him, as in the Declaration; and the Caption thereupon is to be written on Parchment thus, (*viz.*)

By Virtue of his Majesty's Writ hereto annexed, directed to us, and *W. S. H. R.* and *S. A.*
 — We whose Names are hereunto subscribed, on the first Day of *December*, in the fifth Year of the Reign of his said present Majesty, have admitted *R. G.* and *H. L.* to be Guardians to the said *T.* named in the said Writ, (being within Age) to defend a Suit which is now depending in his said Majesty's Court of *Common Pleas*, of a Plea (or in an Action) of *Trespass upon the Case*, (as it is said)

said) according to the Tenor of the said Writ ; Common
 in Testimony of which Matter we have here. Pleas.
 unto set our Seals, the Day and Year above;
 the Execution of which Commission appears
 in a Schedule hereunto annexed: *Subscribing*
the Names of those that executed it.

The *Mittimus* and *Transcript* must be
 entered on the Roll, thus:

Our Sovereign Lord the King, sent hither
to his Justices of the Court of Common Pleas,
his Writ of Mittimus under Seal, together
with the Tenor of a certain Writ of Dedi-
mus potestatem, to admit a Guardian:
 And the Return of the same, and the
 Admission of the said Guardian thereupon,
 are in these Words following, (that is to say)
GEORGE the Second, &c. So go on to
 the End of the *Mittimus* and *Transcript*,
 quite to the Caption (*ut supra*) with the
 Commissioners Names.

A Plea by a Guardian runs thus.

And the said *A. B.* by *C. D.* who is admit-
 ted by this his said Majesty's Court to de-
 fend for the said *F.* who is within Age, as his
Guardian, comes and defends the Force and
 Injury, &c.

X

Precc.

Precedents of Writs of Habeas Corpus, Proce- dendo, Certiorari, and Supersedeas.

A Habeas Corpus. to the Sheriffs of
London.

GEORGE the Second, &c. To the
Mayor, Aldermen, and Sheriffs of our
City of London, Greeting. We command
you, and every of you, that ye have before
our Justices at Westmynster, (if returnable
immediately, when you say) immediately af-
ter the Receipt of this Writ, (if it be return-
able before the Lord Chief Justice, or another
of the Judges at his Chambers, you say) be-
fore Sir Robert Eyre, Knight, our Chief Ju-
stice, (or Alexander Denton, Esquire, one of
our Justices) of our Court of Common Pleas,
at his Chambers, situate in Serjeants-Inn, in
Chancery-Lane, the Body of C. D. who is
said to be detained in our Prison, under your
Custody, by whatsoever Name he shall be re-
puted in the same, together with the Day
and Cause of taking and detaining the said
C. D. to do and receive that which our Court
shall consider of in this Case. And have you
there this Writ. Witness Sir Robert Eyre,
Knight, the Twenty-third Day of January,
in the sixth Year of our Reign.

If

Common
Pleas.

If it be returnable at a general Return, then you say, As the Return is, on the *Octave of the Purification of the Blessed Virgin Mary, &c.*

If it is to be directed to the Judges of the Marshal's Court, you say,

To the Judges of the Court of our Palace of Westminster, and every of them, Greeting. We command you that ye have, &c.

If it be after a *Cepi Corpus*, then you say,

GEORGE the Second, &c. To the Sheriff of Norfolk, Greeting. We command you that you have before our Justices at Westminster, on the *Octave of the Purification of the Blessed Virgin Mary*, the Body of C. D. whom you took by Virtue of our Precept, and now detain in your Custody, as you yourself have returned to our Justices at Westminster, on the *Octave of St. Hillary last past*, to answer to A. B. of a Plea, (or in an Action) that he render to him twenty Pounds, which he owes to, and unjustly detains from him, (as it is said;) and have you there this Writ. Witnesses, &c.

A *Procedendo* to the Judges of the Marshal's Court.

GEORGE the Second, &c. To the Judges of our Palace Court at Westminster, and every

Common Pleas. of them, Greeting. Whereas by our Writ we lately commanded you, that you should have before Sir Robert Eyre, Knight, our Chief Justice of our Court of Common Pleas, at his Chambers, situate in Serjeants-Inn, in Chancery-Lane, London, immediately after the Receipt of the said Writ, the Body of A. B. who was said to be detained in our Prison, under your Custody, together with the Day and Cause of taking and detaining him, by whatsoever Name the said A. should be reputed in the same, to do and receive, what our said Chief Justice should consider of in that Particular. Nevertheless for certain Reasons specially moving the said Justices of our said Court of Common Pleas at Westminster, in this Particular, we command you, and every of you, notwithstanding any Writ lately directed to you to the contrary; that according to the Laws and Customs of our Kingdom of Great Britain, and of your Court, you proceed with Effect in whatsoever Pleas and Complaints are now levied or depending in our Court before you, against the said A. B. Witness Sir Robert Eyre, Knight, &c.

Some of the Forms have been thus, after the Words to do and receive that which our Chief Justice should consider of in this Case; then the Entries have been in this Manner;

Nevertheless because it appeared to our Justices of our said Court of Common Pleas at Westminster, that the said A. does not in due man-

manner prosecute his Writ of *Habeas Corpus*, Common (or his Writ to have the Body, together with Pleas: the Cause of taking and detaining him,) at the Day and Place aforesaid, therefore we command you, that according to the Laws and Customs of Great Britain, and of your Court, you proceed in all, and every the Pleas and Plaints levied or depending in our Court, before you and every of you, notwithstanding any Writ of *Habeas Corpus*, lately directed to you, in the Manner aforesaid. Witness, &c.

If your *Habeas Corpus* was returnable in Court, upon which your *Procedendo* issued, the only Difference is, that you say, *Whereas we lately commanded you, that you should have before our Justices at Westminster, (on such a Return) the Body of A. B. who is said to be detained in our Prison, under your Custody, by whatsoever Name he should be reputed in the same, together with the Day and Cause of taking and detaining him, to do and receive that which our said Justices should consider of in that Behalf. Nevertheless for certain Reasons specially moving our said Justices at Westminster in this Particular, (and then as in the former.)*

Common
Pleas.

*A Certiorari to the Mayor, Aldermen, and
Sheriffs of London.*

GEORGE the Second, &c. *To the Mayor,
Aldermen, and Sheriffs of London, Greeting.*
We being desirous for certain Reasons, that
there should be certified, a certain *Plaint*, le-
vied or exhibited before you, or some of you,
against *C. D.* late of *Bread-street, London*, at
the Suit of *A. B.* in a *Plea of Trespass on the
Case*: Therefore we command you, that you
send to our Justices at *Westminster, on the
Oclave of Saint Hillary*, the said *Plaint*, to-
gether with all Things relating to the same,
in as full and ample Manner as the same now
remains before you, or either of you, by
whatsoever Name the Parties shall be reputed
in the same, together with this Writ; so that
our said Justices may further cause to be done
therein what shall appear to them to be right
and just. Witness Sir *Robert Eyre*, &c.

*If it be so remove an Attachment, then it is
thus.*

GEORGE the Second, &c. *To the Mayor,
Aldermen, and Sheriffs of the City of London,
Greeting.* We being desirous for certain Rea-
sons, that there should be certified, as well
what original Bills and Complaints are levied or
affirmed, before you or any of you, against
Henry Hinde, Citizen and Turner of your
said City, at the Suit of *Thomas Lee*, in an
Action

POCKET COMPANION: 199

Action of *Debt*, as also all *Attachments* made Common thereon, of the Money, Goods and Chattles Pleas, of the said *H. Hinde*, in the Hands or Custody of the said *Thomas Lee*, or of any other Person or Persons whatsoever, levied or affirmed before you, or any of you; We command you that you certify the said *Plaints* and *Attachments*, with every Thing relating thereto, to our Justices at *Westminster*, on the *Morrow of the Purification of the Blessed Virgin Mary*, in as full and ample Manner as the same now remains in our Court before you, that our said Justices may cause to be further done therein, that which shall appear to them to be right and just. Witness Sir *Robert Eyre*, &c.

A Superedeas on a Habeas Corpus, for that it was clandestinely sued out; which was usually called a Writ of Habeas Corpus, quia Erroneè emanavit.

G E O R G E the Second, &c. Whereas we lately commanded you by our Writ, that you should have *A. B.* being in our Prison, under your Custody, together with the Day and Cause of taking and detaining him, before our Justices at *Westminster*, on the *Octave of St. Hillary, last past*, to do and receive that which our Court should consider of in that Case. And because it appears to our Justices at *Westminster*, that the said Writ of *Habeas Corpus* was sued out clandestinely; Therefore we command you, that you altogether forbear molesting the said *A.* by Reason of the

Common
Pleas.

Premises, or in any Manner executing the said Writ, or returning the same before our Justices at *Westminster*. Witness Sir *Robert Eyre*, &c.

A Superfedeas because a Capias ad Satisfaciendum was clandestinely sued out.

GEORGE the Second, &c. To the Sheriff of *Middlesex*, Greeting. Whereas we lately commanded you by our Writ, that you should take *A. B.* late of *Westminster*, in your County, Hosier, if he should be found in your Bailiwick, and safely keep him, so that you might have his Body before our Justices at *Westminster*, within fifteen Days from the Day of *St. Martin* then to come, to make Satisfaction to *C. D.* for twenty Pounds, which in our same Court, before our Justices at *Westminster*, were awarded to the said *C. D.* for his Damages which he had sustained, by reason of not performing certain Promises and Undertakings made by the said *A.* to the said *C.* at *Westminster*, in your said County, whereof he is convicted; and because it sufficiently appears to our said Justices, that our Writ to take his Body to make Satisfaction, was unduly and clandestinely sued out of our said Court; therefore we command you, that you altogether forbear taking, or any ways molesting the said *A.* by reason of the Premises, or in any manner executing the said Writ, or making a Return thereof to our said Justices at *Westminster*; and if you shall have taken the said *A.* upon that, and no other Occa.

Occasion, then discharge him, and permit him Common
to go at large. Witness Sir Robert Eyre, &c. Pleas.

A Superseas on an Outlawry.

GEORGE the Second, &c. To the Sheriffs of London, Greeting. Whereas we lately commanded you, that you should not omit, by reason of any Liberty in your County, to take *H. Hinde*, late of *Bread-street, London*, Turner, (outlaw'd in London, on the twenty-second Day of September, in the sixth Year of our Reign, at the Suit of William Martin, in an Action of Debt) if he should be found in your Bailiwick, and that you should safely keep him, so that you might have his Body before our Justices at *Westminster*, at a certain Day now past, to do and receive, that which our Court should then and there consider of in that Particular; and because it sufficiently appears to our Justices at *Westminster* of Record, that the said Outlawry, pronounced and obtained against the said *H. Hinde*, is altogether Void, and of none Effect in Law; therefore we command you, that you altogether forbear taking, arresting, imprisoning, or in any wise further molesting the said *H. Hinde*, by reason of the said Outlawry; and if upon that and no other Occasion, you have taken and imprisoned the said *H. Hinde*, then permit him to go at large (or discharge him) under the Penalty attending the Neglect thereof. Witness Sir Robert Eyre, &c.

Common
Pleas.A Superfedeas on a Capias, the Defendant
having put in Bail.

GEORGE the Second, &c. To the Sheriff of *Middlesex*, Greeting. Whereas by our Writ we lately commanded you, that you should take *Thomas Barber*, late of *Westminster* in your County, if he was to be found in your Bailiwick, and safely keep him, so that you might have his Body before our Justices at *Westminster*, at a certain Day then approaching, to answer to *R. Spark*, in an Action of *Trespass on the Case*, upon Promises made by the said *T.* to the said *R.* at *Westminster* aforesaid; and because the said *Thomas* appeared in our Court, before our Justices at *Westminster*, at the Day and Place contained in our said Writ, to answer to the said *R.* according to the Form and Effect thereof; therefore we command you, that you altogether forbear taking, attaching, imprisoning, or further molesting the said *Thomas* on that Occasion; and if you have taken him on that, and no other Occasion, then without Delay, cause him to be discharged from the Prison in which he is so detained, under the Penalty attending the Neglect thereof. Witness Sir *Robert Eyre*, &c.

De

Of Fines and Recoveries.

THE Method in which this Treatise of Fines is to be handled, is to consider,

First, *The Nature and Definition of a Fine.*

Secondly, *Of the several Sorts of Fines.*

Thirdly, *Of the several Parts of a Fine.*

Fourthly, *Who may be Cognizors and Cognizees.*

Fifthly, *By what Names Cognizors and Cognizees may Pass and Accept of a Fine.*

Sixthly, *By what Names the Parcels may pass and are to be placed.*

Seventhly, *The manner of Passing Fines.*

Eighthly, *Of the Effect and Operation of Fines, with my Lord Coke's Readings on Fines and Comments thereon.*

First, *The Nature and Definition of a Fine in general.*

A Fine is an Instrument of Record of great Antiquity, and is in its self an Agreement the Parties are supposed to make after a Litigation and Controversy that is likewise supposed to have been had between them,

Common
Pleas.

them, and it is called a Fine *Quia finem Litibus Imponit*; or as *Glanvill* more particularly describes it, *Concordia finalis est quia finem ponit negotio, adeo ut neutra pars litigantium ab eo de cetero possit recedere.*

Why, I say, that it is supposed to be made on a Controversy is, because originally it was made on a *real Suit*, wherein the *Conuzee*, which is the Plaintiff, had brought an Action of *Covenant* against the *Conuzor*, to compel him to perform his *Covenant*, to which Action the *Conuzor*, having nothing at all to say, why he should not perform his *Covenant*, he therefore agree to do it: And this Agreement was made and entered upon a Record, by which all Parties thereto were bound; but now it is become a common Assurance, and the Action is not really brought in an adversary manner, but is *factio Juris*, in order to form a foundation for this Agreement to be had thereon, with the proper Order and Solemnity required thereto.

As to its Antiquity, my Lord Coke, in his second *Institutes*, tells us, that they were frequent before the Conquest, Co. 2 *Instit.* 511.. A Fine hath been called a *Feoffment* of Record; but it is improperly so termed; but the meaning of it was, because it hath the Effects of a *Feoffment* to some Purposes,
if

if he that levied the Fine was seized of Common Pleas.
the Freehold at the time of the Fine levied. 1 Salk. 340.

Fines were leviable before the Statute of the 18 of Ed. 1. commonly called, *Modus levandi Fines*, in Inferior Courts upon Bills or Plaints, which now cannot be, unless by Grant or Custom, by reason of the negative Words of that Statute; but this does not extend to *antient Demesne* Courts, for then this Statute would make Fines of those Lands leviable in the Court of Common Pleas; whereas they are not, but reversible by a Writ of *Deceit*; so that they would be under a double Disadvantage, that a Fine would not be leviable of the Land any where, if not in the Court of *antient Demesne*, whereas that which is their Privilege could never be intended to be to their Disadvantage, Salk. 340.

Secondly, Of the several sorts of Fines.

There are four different sorts of Fines:

1. A Fine *sur Cognizance de droit comece* que il ad de son done, &c.
2. A Fine *sur Cognizance de droit tantum*.
3. A Fine *sur done Grant and Render*.
4. A Fine *sur Concessit*.

1. The

Common
Pleas.

1. The Fine *sur Cognizance de droit come-
geo que il ad de son done.*

It is so call'd because by it the Cognizer acknowledges the Right of the Cognizee, which he hath by a Gift from the Cognizer, and it is said to be a *single Fine*, and the best and surest Fine that is to be pass'd, and is in construction of Law a Fine perfectly Executed, whereas you may perceive hereafter others are *Executory*; and this Fine doth by its own Force give immediate Possession (at least in Law) to the Cognizee, so that he needs no Writ of *Habere facias Seisnam*, or any other means for the execution thereof; for, as may be observed, it admits the possession of the Lands of which the Fine is levied, to pass by the Fine, so that the Cognizee may enter, for that the Estate is thereby in Law in the Cognizer; that is to say, to such Uses as are declared in the Deed, to be the Uses thereof; for it is a general Maxim, that unless the Uses are declared by Deed or otherwise, such Fine shall be and enure to the use of the Cognizer that levied the same. This Fine is always levied with *Proclamations*, according to the Form of the Statute of the 4 H. 7. C. 24.

The Fine *sur Cognizance de droit come-geo, &c.* cannot be levied to any Person that is not
Party

Party to the Writ of Covenant, neither can the Grant and Render of the Land, Co. be immediately in *primo gradu* to any that is no Party int he Writ, but mediately or in *secundo gradu*, Co. It may, for Example, if a Writ of Covenant be brought by A. against B. of the Manor of D. B. levies a Fine to A. *concord*, Co. A. may grant and render the same to B. for Life, or in Tail, the Remainder to F. in Fee, for albeit the Writ of Covenant be inter A. querant and B. deservientem, so as F. is a meer Stranger to the Writ, yet seeing he taketh it by way of Remainder, depending upon an Estate warranted by the Fine, it hath been allowed in our Books, and hath been compared to a Deed indented between A. and B. whereby A. doth give Lands to B. to have and to hold for Life, or in Tail, the Remainder to C. who is a Stranger to the Deed in Fee. Co. 2 Inst. 514

Common
Plea.

2. Of a Fine *Cognizance de droit tantum*. A Fine *sur Cognizance de droit tantum* is so called, because the Cognizor only acknowledges the Estate to be the Right of the Cognizee, and is said to be Executory, and much of the Nature of a Fine *sur concessio*, and is commonly used to pass a Reversion, and then it is expressed in the Fine, that the particular Estate is in another, and that

Common
Pleas.

that the Cognizor wills that the Cognizee shall have the Reversion, or that the Land shall remain to him after the particular Estate is spent. And sometimes it is used by Tenant for Life; to make a Lease in the nature of a Surrender to him in reversion, but not by the Word Surrender; for it is said, a particular Tenant, as for Life, cannot surrender his Tenement to him in reversion, or remainder by fine; but he may grant and release to him by a Fine. 44 E. 3. 36. 3 Co. 86. Dyer 216. Plow. 268.

3. Of a Fine sur done Grant and Render. A Fine sur done Grant and Render, is that which is called a double Fine; because it comprehends in it the Nature and Use of a Fine sur Cognizance de droit come ceo que il il ad de son done, &c. and a Fine sur Concessit; because it first supposes the Cognizor to release with Warranty to the Cognizee the Lands contained therein; and the Cognizee by the same Deed Grants or Renders back to the Cognizor himself, or to a Stranger which is supposed to be by the consent of Cognizor, the Lands so released, or some part thereof; and so far as it resembles a Fine sur Cognizance de droit come ceo, &c. it may be said to be an Agreement Executed; but so far as it resembles a Fine sur
Con-

Concessit, it may be said to be *Executory*; only because possession of the Lands was not *Executed* by the *Fine*, but is still to be had by a Writ of *Habere facias possessionem* for that purpose. Common Pleas.

And there is this difference between a *Fine sur Grant and Render* which contains a double *Fine*, and a *Fine sur Cognizance de droit come ceo que il*, &c. that the latter must be levied of the Land in the Writ of *Covenant*; that is, the Agreement must relate to the whole Land there mentioned, but the *Fine of Grant and Render* may be as to the *Render* of another thing than is mention'd in the Original; but then it must so far be not another as to be implied, Incident, or a part of what is contained in the Writ of *Covenant*: As, where *A.* brings a Writ of *Covenant* against *B.* for the Manor of *D.* - *B.* cannot levy a *Fine* to *A.* of a *Rent*, to be issuing out of the Manor *D.* but he must levy a *Fine* to *A.* of the Manor of *D.* according to the Writ and his *Covenant* is therein express'd; but *A.* may *Grant and Render* to *B.* a *Rent* out of the same Manor contained in the *Fine*, but not of any other Land; neither can the *Grant and Render* be of any thing collateral to the Land, &c. contained in the Writ, or of another Nature; and neither issuing out

Common
Pleas.

out of, or not incident to the Land contained in the Original.

If two levy a Fine, the *Grant* and *Render* may be to one of 'em.

Note, None may take the first Estate by way of *Render* but the Cognizors or one of them.

If a *Grant* and *Render* in a Fine of Land be immediately, & *in primo gradu*, to one that is no Party to the Writ, this is not good, but mediately, or *in secundo gradu*, such a one may take; as if two levy a Fine, and the *Grant* and *Render* back again is to one of them only, this is good enough. 2 Co. Inst. 514.

So if a Writ of Covenant be brought by *A.* against *B.* of the Manor of *D.* and *B.* levy a Fine to *A.* *come ceo*, &c. in this Case *A.* may grant or render the same to *B.* for Life, or in Tail, the Remainder to *E.* in Fee; and this is good as in a Deed by way of Remainder, 2 Inst. 514. Bro. Abr. 111, 117, 118.

Note, No single or double Fine may be with a Remainder over to any other Person not contained in it, but it must be to the Cognizee and his Heirs only; nor can any Rent be reserved upon a pure Fine *sur Cognizance de droit come ceo*, but it may be upon a Fine of *Grant* and *Render*, and upon
sur

con- fur Concessit only; nor may it be on a Common
Condition, 5 Co. 38. Pleas.

Ren- Note, That by a double Fine, or Fine
with Render, almost any kind of Contract
estate about Land may be made, and drawn up
in Form by a Fine of this nature, See
West. Symb. 2 part, Park. sect. 629. Bro.
Fines 108. Double
Fine.

Note, That the Render of a Rent (if
any be) must be to one of the Parties to
the Fine, and not to a Stranger, Dyer 63.
Co. 39. in Lord Cromwell's Case. Render.

A Man may not reserve to himself a less
Estate by way of Remainder, than the Fee; Remain-
as if A. levy a Fine of his Land to B. and der.
B. regrant, and render it to A. for Life,
this will be void, 14 H. 4. 31. 34 E. 3.
26. Dyer 33. 34. 69.

And there may not be a Condition or
Clause of Re-entry for not payment of Condition
Rent inserted into this kind of Contract Re-entry.
or Concord; and yet some hold that a
Fine levied to one in Tail upon a Condi-
tion, with a Remainder over, is good,
1 Co. 76. 6 Co. 33. 3 Co. in Cromwell's Case,
Dyer 33, 69. See 27 H. 8. 84. Plow. 34.
34 E. 3. 62. Whereby it seems a Fine may
be levied to one upon Condition, with a Re-
mainder, but not with Re-entry.

Note,

Common
Pleas.

Note, That a Render of a Concord may not be of any other thing than what is in the Writ of Covenant, unless it be of a Rent, or Common issuing out of it. 18 E. 4. 12.

*Example
upon this
sort of Fine.*

But a Fine may be (as hath been said) with a Render back again of some Estate in the same Land that passeth by the Fine, or some Rent out of it; so that in this kind of Fine there may be a Reservation of Rent, a Clause of Distress, or *Nomine pana*, and a Warranty; and therefore if *A.* levy a Fine to *B.* *sur Cognizance de droit come ceo*, &c. and *B.* by the same Concord doth grant and render the Land back again to *A.* for Life, without Impeachment of Waste, the Remainder to *C.* the Wife of *A.* for her Life, the Remainder to *A.* and his Heirs.

Jointure.

This is a good Concord, and by this Devise a Jointure may be; and is oft-time made for a Woman.

*To make a
Jointure.*

So if *A.* and *B.* his Wife levy a Fine to *C.* in Fee, *sur Cognizance de droit come ceo*, &c. and then *C.* rendreth to *A.* for Life, without Impeachment of Waste, the Remainder to *B.* his Wife for term of her Life, the Remainder to *A.* and his Heirs, this is good. *Bro. Fines* 108.

And

And by this Form a Lease for Life or Common Years may be made by Fine with a Rent. The Lessee must acknowledge the Land to be the Right of the Lessor that is seized of the Land, as that, &c. and then the Lessor must grant and render the same back again to the Lessee (that is Conu- for in the Fine) for Life, or for a certain number of Years, (as the Agreement is) re- serving a Rent with a Clause of Distress; and this is a good Fine, and a common Device for this purpose; but if the Lessor be Te- nant in Tail, it seems this kind of Fine will not bind the Issue in Tail.

And yet if A. Tenant in Tail, and N. do by Fine acknowledge the Land to be the Right of a Stranger, as that, &c. and then the Stranger (that is the Cognizee) doth grant and render the Land back again to N. for Life or Years, rendering a Rent with a Clause of Distress, &c. and then grants and renders the Reversion to the Tenant in Tail, this will be a good Fine to bar the Issue in Tail, and will likewise pass the Rent and Reversion to the Tenant in Tail also, *To bar the Issue in Tail.*
Bro. Fines 106, 118. *6 Co.* 33. *1 Co.* 76. *Plow.* 435. *Dyer* 279. *Perk. sect.* 629.

To have a Lease for Years to bind a Tenant in Tail. The Tenant in Tail and the Lessee must acknowledge the Tenements

to

Common
Pleas.

to be the Right of one *or* a Stranger, who grants and renders the same Fine to the Lessee for Years, the Remainder to the Lessor and his Heirs; this with Proclamations is a good Lease to bar the Issue in Tail, 44 E. 3. 45.

Aliter.

And by a Fine with a Render a Lease for Years may be made thus also. If one that is Tenant in Tail within 13 H. 7 accepts of a Fine *sur Cognizance de droit come ceo*, &c. and then by the same Fine renders back the Land to the Cognizor for 100 Years; this will be a Discontinuance, and bind the Issue by this Statute, 2 Leon. Case 206.

4. Of the Fine *sur Concessit*.

A Fine *sur Concessit* is such a Fine as where the Conuzor is seized of the Lands contained therein, and the Conuzee hath no Freehold therein but it passeth by the Fine. This Fine is said to be Executory, so that the Conuzee or Conuzees therein must enter or have a Writ of *Habere facias seisinam*, according to their several Cases for the obtaining of the Possession; if the Parties to whom the Estate is limited, at the Time of levying such Fine, be not in possession of the thing granted: But if they be in

pos-

possession at such time, there needs not any Common Pleas.
 such Writ, or any Execution of the said Fine to put them in possession; for then, the Fine will enure by way of *Extinguishment of Right*, and doth not alter the Estate or Right of the Cognizee; however it may better be.

Thirdly, *Of the several parts of a Fine.*

First, *The Original Writ against the Cognizor.*

Secondly, *The Composition, or the King's License to alienate.*

Thirdly, *The Concord.*

Fourthly, *The Note of the Fine.*

Fifthly, *The Foot of the Fine.*

Sixthly, *Of the Proclamations.*

1. *Of the Original Writ.*

A Writ of Covenant is the usual Original Writ taken out by the Cognizee or Cognizees, against the Cognizor or Cognizors to the Fine; for without an Original Writ a Fine cannot be levied: Yet, tho' a Fine is usually levied upon a Writ of Covenant, it may be levied upon a Writ of right Close or in any real Action, but not upon an Original Writ in any personal Action.

And

Common
Pleas.

And tho' a common Action of Covenant is a *personal Action*, in which Damages are to be recovered for a Breach of Covenants; yet this Writ of Covenant which demands the Land itself, is a *real Action*; and is brought to have an Execution and performance of the Covenants, viz. to render the Land to the Cognizee. 5 Co. 59 Fitz. *natura Brev.* 146. F. Co. 2 Inst. § 143 And. 71. Kelw. 90. 4 Inst. 407.

2. Of the Composition, or the King's License to alienate.

The Composition, or the Money which is to be paid to the King for his License to alienate, is call'd a *Composition*; because the Fine or Sum of Money which is to be paid, and is generally called the King's Silver, is *Compounded* and made easy by Commissioners, appointed by the King for that purpose: And the Office where they sit to execute their Authority, is call'd the *Alienation Office*: And the Rule that they go by as to the payment of the Money, is mention'd to be as follows.

Every

POCKET COMPANION.

217

	Land, rated at 40s. or Common Pleas.
Every five Marks	under pays nothing,
and 20s. pays	Above 40s. to 3l. 6s. 6s. 8d.
	8d. pays 0 6s. 8d.
	5l. 6s. 8d. pays 0 10 0
	7l. 13s. 4d. pays 0 13 4
From five Marks	8l. 13s. 4d. pays 0 16 8
and 20s. to	10l. pays — 1 0 0
five Marks and	12l. pays — 1 2 4
40s. pays 10s.	14l. 6s. 8d. pays 1 6 8
	15l. 6s. 8d. pays 1 10 0
	17l. 13s. 4d. pays 1 13 4
Above five Marks	18l. 13s. 4d. pays 1 16 8
and 40s. unto	20l. pays — 2 0 0
ten Marks and	22l. pays — 2 3 4
20s. pays 13s.	23l. 6s. 8d. pays 2 6 8
4d.	25l. 6s. 8d. pays 2 10 0
	27l. 13s. 4d. pays 3 13 4
	28l. 13s. 4d. pays 3 16 8
And so in like	30l. pays — 3 0 0
proportion for	And so on to a greater
all others,	progression.

This Fine *pro Licentia Concordandi* is an ancient Flower of the Crown, and is called the *King's Silver*: And this Fine consists of a present Fine paid at the time of the Commissioners signing the Writ of *Concordant*, and of a post Fine, which is paid when the Fine is completed, and hath been

L

enter'd

The ATTORNEY'S

enter'd in the King's Silver Office; and is called a *post Fine* in respect of the *first Fine*, or the *Fine* in the *Hamper*: For in every real Action of Lands or Tenements of the yearly Value of five Marks, there is due in the *Hamper* upon the Original 6 s. 8 d. that is for every five Marks of Land; and if it be under five Marks, no *Fine* in the *Hamper* is due upon the Original. Now the *Fine pro Licentia Concordandi* or the *post Fine*, is also certain; for it is as much as the *first Fine*, and half as much more: As for Example, where a Writ of Covenant is brought to levy a *Fine* of Lands of the Value of five Marks, there is 6 s. 8 d. due presently for the *first Fine* in the *Hamper*, but the *Fine pro Licentia Concordandi* or the *post Fine*, is not due till *Conge de accorder* (i. e. the License to agree) be granted by the Court, and then the *post Fine* is 10 s. And if the Land be under five Marks, yet there shall be a *Fine* for this leave to alienate, and that is also certain, viz. 6 s. 8 d.

And if the King's Silver be enter'd and indorsed upon the Writ of Covenant by the proper Clerk for that purpose, altho the Cognizer or Cognizors die before the *Fine* comes to the Chirographer, yet is the *Fine* a complete *Fine* for the other two Parts, viz. the Note of the *Fine* and the Foot of the

the Fine, are but Abstracts taken out of it. Common Pleas.
2 Co. 7, 11. b. c.

3. Of the Concord.

The Concord or Agreement between the Parties that intend the levying of the Fine, is that Instrument whetein is declared, how, and in what Manner the things contained in the Writ shall pass: And as the Writ of Covenant is the Foundation, so this is the Substance of the Fine.

In this Concord the particulars or parcels need not, nor are they used to be recited over again, as they are inserted in the *Præcipe*; for the Writ of Covenant, or any other Original Writ whercon the Fine is to be levied; but it will be sufficient to say,

And the Agreement is such, (that is to say) that the said A. hath acknowledged the said Tenements with the Appurtenances to be the Right of the said B. &c.

And by these Words (the said Tenements) any number or quantity of distinct Things or Parcels will be well enough expressed.

But if the *Præcipe* be of entire Things, as of a Manor or Manors with the Appur-

Common
Pleas.

tenances, then you must expresse it thus in the Concord.

And the Agreement is such, that is to say) that the said A. hath acknowledged the said Manor, or the said Manors, with the Appurtenances, &c.

Neither will *Messuages* named by themselves in a *Præcipe*, pass by the Word *Tenements* in the Concord also.

An Honour; Castle; Island; Barony; Hundred; Borough; Knight's fee; the Site of a Manor; a Park; a Prebendary; a Rent; Common; Oblations; Toll; Drallage; Portage; View of Frankpledge; a Liberty; Franchise; Office; Bailiwick; Fair; Market; Passage; a Warren; Fishery; Rectorie; Tythes; The Moety or part of an entire Thing; Wreck of the Sea; the Advowson of a Church; a portion of Tythes; must be particularly named in the Concord as well as in the *Præcipe*.

And here 'tis to be consider'd, the End and Intent of the Fine which is to pass a Right, and limit Estates from one to another, appears by the Concord thereof, in which it is to be noted, that tho' there be divers *Cognizees*, yet the Right shall be limited to one of them only, and the Estate limi-

limited to his Heirs only, whose Right is Common is acknowledged to be. See *West. Symb. Pleas. Tit. Fines. 3 H. 6. 42 E. 3. 64.*

As thus, A. is Cognizor, B. and C. Cognizees.

And the Agreement is such, that the said A. hath acknowledged the said Tenements with the Appurtenances, to be the Right of the said B. as those which they the said B. and C. have of the Gift of the said A. and those he hath remitted and quit, claimed, from himself and his Heirs, to the said B. and C. and the Heirs of the said B. forever; and for this, &c.

It is also said, that the Release and Warranty must be by one of the Cognizors, and from him and his Heirs only; for in a Fine from divers, the Fee must be supposed to be in one of them only, 21 E. 3. 33. but I find the Use generally otherwise.

Indeed, in a Fine from a Man and his Wife, it seems sometimes to that purpose, as thus:

Command A. B. and C. his Wife, that they justly, &c. perform their Covenant to D. - B. &c.

From Husband and Wife, the Fee being in the Husband.

And the agreement is such, (to wit) that the said A. and C. have acknowledged the said Tenements with the appurtenances, to

Common
Pleas.

to be the Right of the said D. as those which the said D. hath of the Gift of the said A. and C. and those they have remitted and quit-claim'd, from them the said A. and C. and the Heirs of the said D. to the said D. and his Heirs for ever; and moreover, the said A. and C. have granted for themselves and the Heirs of the said A. that they will warrant to the said D. and his Heirs the said Tenements with the Appurtenances against them the said A. and C. and the Heirs of the said A. for ever, and for this, &c.

From Husband and
Wife, of
the Wife's
Lands.

And the agreement is such, (to wit) that the said A. and C. have acknowledged the said Tenements with the Appurtenances to be the Right of the said D. as those which the said D. had of the Gift of the said A. and C. and those they have remitted and for ever quit-claim'd, from them the said A. and C. and the Heirs of the said C. to the said D. and his Heirs; and moreover, the said A. and C. have granted for themselves and the Heirs of the said C. that they will warrant to the said D. and his Heirs, the said Tenements with the Appurtenances, against the said A. and C. and the Heirs of the said C. for ever; and for this, &c.

And so it may be from two others, the Fee being in one of them.

But generally where there are divers Cognizors in a Fine, the Release is from them and their Heirs, as thus, by *Husband and Wife,*

Wife, and the two other *Conufors*, or two *Common Pleas* *Conufees*.

And the Agreement is such, (to wit) that the said A. B. C. and D. have acknowledged the said Tenements with the Appurtenances to be the Right of the said E. as those which they the said E. and T. have of the Gift of the said A. B. C. and D. and those they have remised and for ever quinc claim'd from them the said A. B. C. and D. and their Heirs, to the said E. and T. and the Heirs of the said E. and moreover, they the said A. B. C. and D. have granted for them and the Heirs of the said A. that they will warrant the said Tenements with the Appurtenances to the said E. and T. and the Heirs of the said E. against all Men for ever; and for this, &c.

Note; this is proper where the Cognizees are seised Jointly, for if they have separate Rights it is proper there should be separate Warranties.

Or, if the Warranty be Special thus, A. B. C. and D. and the Heirs of the said A. for ever.

And in these Cases each of the *Conufors* may warrant apart if they will, and one may give a General Warranty, and the other a Special Warranty; and 'tis the usual Practice to warrant where there are divers *Cognizors*, as thus in the former Cases.

And furthermore they the said A. and B. have granted for themselves and the Heirs of the said A. that they will warrant to the

Common
Pleas.

said E. and T. and the heirs of the said E. the said Tenements with the appurtenances, against them the said A. and B. and the heirs of the said A. for ever; and furthermore the said C. hath granted for himself and his heirs, that they will warrant the said Tenements with the appurtenances to the said E. and T. and the heirs of the said E. against the said C. and his heirs for ever; and also the said D. hath granted for himself and his heirs, that they will warrant the said Tenements with the appurtenances to the said E. and T. and the heirs of the said E. against the said D. and his heirs for ever; and for this, &c.

And so of the like by these Words, and moreover, and furthermore, and also, and further, and lastly, as you may observe in the following Presidents.

And Note, That Lands bought of divers Persons by several Purchasers, may well pass in one Fine, and then the Writ of Covenant must be brought by all the Vendees against all the Vendors; and every Vendor must warrant against him and his Heirs only: And these Joint Fines are reasonable when the Purchases are of small Value. See after a *Præcipe* and *Concord*, where one Cognizor warrants one part, another another part, and another another part.

And

And Note further, that one Concord may be of Lands in several Counties, and the Fine for leave to agree to alienate of all extracted entirely; but there must be several Writs of Covenant returnable all at one Day. *Dyer 227. pl. 24. See West. Pres. Tit. Fines.*

4. Of the Note of the Fine.

The Note is taken out of the Writ of Covenant and Concord by the Chirographer before it be Engrossed: It begins thus,

Between A. B. Plaintiff, and C. D. Defendant, and recites the whole Fine or the Substance thereof.

5. The Foot of the Fine.

The Foot of the Fine includes the whole Fine. 1. The Parties thereto. 2. The Thing granted. 3. The Day, Year, and Place, and before whom the Concord was made. And it is called the Foot of the Fine, because it is the last part of the Fine: And when this is done, the Fine is engrossed of Record, and the Indentures are made by the Chirographer, and delivered to the Party to whom the Fine is levied, and then the Fine is said to be engrossed.

The ATTORNEY'S

6. Of the Proclamations.

A *Fine* may be with or without *Proclamations*: If it be without *Proclamations*, it is termed a *Fine* at *Common Law*, and is levied in such Manner as they were before the Fourth of *H. 7. cap. 24.* and still remains of Force to discontinue the Estate of the *Cognizers*, if it is executed. If it be with *Proclamations* it is termed a *Fine*, according to the Statute of the 1 of *R. 3d. 4 H. 7. 24.* and such a *Fine* is every *Fine* that is pleaded, intended to be, if it be not shewn what *Fine* it is; and these *Fines* with *Proclamations* are the best Sort of *Fines* and most used; and it is said to be in the Election of the *Cognizee*, to have it with or without *Proclamations*; and if there be Error in the *Proclamations*, yet, the *Fine* shall be deem'd a *Fine* at *Common Law* without *Proclamations*. *Jenk. Cont. Case 6. Case 35. 2 Inst. 519.*

And tho' a *Fine* levied in the Court of *Antient Demesne* works a *Discontinuance*, tho' the Court is not a Court of Record, inasmuch as the Freehold is recover'd in the Action; such a *Fine*, is not a Bar to an Estate Tail, for it is by the before-mention'd Statute of the 4 of *H. 7.* that a *Fine* with *Proclamations* will bar an Estate Tail; and no *Fine* but a *Fine* with *Proclamations* is within that Statute, nor can

can bar an Estate Tail. 1 Salk. 240.

Common
Pleas.

The *Proclamations* made upon the Fine, which, altho' they be not the Essential Parts of the Fine, yet upon every Fine, made according to the Statute they must be made, and being made, they do make a Bar according to what doth pass.

The *Proclamations* were appointed first by the Statute 1 R. 3. 7. though afore that time by the Statute *de finibus levatis*, Fines were openly to be read at two certain Days in the Week, (by the Discretion of the Justices) and by this Statute of Richard the Third. Fines at the Common Law have the same Force they had before, and might be levied according to that Statute or the Common Law, at the Election of the Parties.

The *Proclamations* were to be made four several Days in each Term, during four succeeding Terms, by the Statute, 1 R. 3. 7. 4 H. 7. 27. 32. H. 8. 26. But by the Statute, 31 El. 2. Fines in the Common Pleas shall be proclaimed four times only, viz. Once in the Term wherein the Fine is ingrossed, and once in each of the three Terms then next following.

If any *Proclamation* be made upon a Sunday it is Error, because it is not *Dies Juridicus*. Dyer, 128.

Fourth.

Common
Pleas

Fourthly, **Who may be Cognizors and Cognizees**

Having considered a Fine in all its Parts, we come next to observe, who may be **Cognizors** and **Cognizees** in Fines.

1. **Who may be Cognizors.**

Such Person either Male or Female, or Bodies Sole or Corporate, that may lawfully grant by Deed, may be **Cognizors** in Fines.

Persons
that may
not grant.

2 Co. 114.
12 Co.
124. Coe
Ed. sect.
731

Those that are not admitted to levy Fines are, such as *Infants*, *Women Covert*, *Ideots* or *Lunatics*; one that is *Blind*, *Deaf*, and *Dumb*; one that is *Doting* in *Old Age*, or wants *Discretion*; or one that is much in *Drink*, or compelled by *Duress* of *Imprisonment*; and it is in some Cases left to the Discretion of the *Judges* or *Commissioners* whom to admit; for tho' many of these have the Liberty of Exception against such a Fine, yet it may happen, not to be in their power to avoid it; *Fieri non debet sed factum valet*; of which more hereafter.

Note. A Fine may be levied by a *Feme Covert*, and tis only voidable by the *Husband* and not by her after his *Decease*.

2dly.

2dly. Such Civil Corporations as have an absolute Estate in their Possessions belonging to their Corporations; as a Mayor and Commonalty, &c. may, together, and with a joint Consent, levy a Fine of the Land belonging to their Corporation, as a single Person may do; but no one of the Corporation, tho' he be the Head thereof, nor any of the Members, without the general Consent of the whole Corporation, can levy a good Fine.

All Bishops, Deans and Chapters, Heads and Fellows of Colleges, and such like, who have any Estate of Freehold in Ecclesiastical Lands, in Right of their Churches, &c. are forbidden and restrained by divers Acts of Parliament, from levying any Fines of their Lands belonging unto them.

Also, he that hath an Estate Tail of the King's Gift or Provision, cannot levy a good Fine of it to bind the King, or to bind the Issue in Tail, by 32 H. 8. Chap. 28.

Also a Fine levied by the Heir that is an Intruder upon the King's Possession, is void, 1 H. 7. 5. 24 Edward 3. 65.

Also Fines levied of any Land prohibited to be sold by Act of Parliament, are void. Stat. 32 H. 8. cap. 36 and 28. and he that hath an Estate in Fee Simple in Land.

Common Pleas.

Corporations.

Spiritual Persons.

21 E. 4.

13. Plow.

11-78.

122, 124,

538, 575.

11 Co. 78.

Tenants

in Tail of

the King's

Gift.

Intruder

upon the

King.

Lands pro-

hibited by

Act of Par-

liament.

By Husband of the Wife's Lands. Land in the Right of his Wife, can't levy a Fine without her. *ibidem*. So that the Persons that levy a good

Fine, must be such as have such an Estate in the Land as they are not prohibited by any Law to levy the Fine, otherwise, the Fine will be void.

Persons Outlaw'd. But Persons who are Outlaw'd, or Wavered in Personal Actions only, may levy a Fine.

Attainted of Felony or Treason. And Persons attainted of Felony or Treason, may levy by Fine; and it will be good against them and all others, except the King and the Lord of whom the Land is held, 17 Ed. 3. 52. 17 Ass. pl. 4. 1 H. 7. 7. 9. H. 6. 20. 8. Ass. 25. therefore Care ought to be taken, how such Fines are levied.

Joint Tenants, &c. A Joint Tenant, Tenant in Common, or Partner, may levy a Fine of the Land so held by him, to a Stranger, or to another Joint Tenant, Tenant in Common, or Partner. 36 H. 8. 9. Dyer 69. 334. Plow. 338. 378. 14 E. 4. 68.

Remainder or Reversion. Also Tenant in Fee Simple, in Remainder or Reversion, Tenant for Life, 'tis said, may levy a Fine sur Grant and Release, &c. of the Lands which he holdeth for Life, to hold to the Cognizee for Life, of the Tenant for Life, 44 Edw. 3. 36. but if the Estate

Estate be larger, it is a Forfeiture of his Common
Estate, 4 H. 7. Voy. 30. Pleas.

And so the Law is the same of such Fines
by Tenant in Tail after possibility, Ten-Tenants
ant in Dower, or by the Courtesy. 39 E. in Tail.
3. 16.

But it seems to be no Forfeiture of a
Rent. 2 H. 5. 7.

Who may be Cognizees.

Any Person that hath a Capacity to
take by the Grant of a Deed, so as to be
a good Grantee, such a Person may be a
good Cognizee in a Fine; so any Man or
Woman, Sole or Covert, of full Age or un-
der Age; any mad or lunatick Persons,
Idiot, or a Man of unsound Memory; and
any Man in, or out of Prison, or beyond
Sea; any Person attainted of Felony or Treason,
or outlawed in a Personal Action; a
Bastard; a Clerk Convict, an Alien; any of
these may be a good Cognizee, and take by
a Fine as well as by a Deed; and a Fine
levied to any such Person will be good.

All persons having a Capacity to take by the Grant of a Deed may be Cognizees.
50 E. 3. 9.
3 H. 6. 42.
24 E. 3. 62.

So Corporations Spiritual and Temporal, Corporati-
Civil or Corporal, may be Cognizees in
Fines, and Fines levied to them will be
good.

are called by their Christian Names together with their Additions of Honour

POCKET COMPANION.

233

Honour; as *A. B. Baronet, C. D. Knight, E. F. Esquire, G. H. Gentleman, &c.* Common Pleas.

And the Addition of *Bishop, Dean, Prebendary, &c.* it's said, are rather used out of Courtesy than Necessity; for the Fine may be good without it. *21 E. 4. 8.*

1 Ass. pl. 11. 7 H. 4. 22. 14 H. 6. 15. Brownlow 30.

A Corporation or Fraternity, must be described by the very true Name of the Corporation; as it is named in the Charter and Foundation of it. *11 H. 4. 44. 12 H. 4. 20. 7 H. 6. 27. 37 H. 6. 29.* Corporations how to be named.

It hath been said, that some small Difference in a Name, it's said, will not hurt; as *Margery* for *Margaret, Agnes* instead of *Anne*; but yet, a Fine levied to *A.* and *Sibel* his Wife, where her right Name was *Isabel*, was held void. *1 Ass. pl. 11. Bro. 344.* Some small difference in a Man's Name will not hurt.

But if a Fine be levied by a Man and his Wife, and the Wife is named wrong, it's said, this Fine shall bind her by *Estoppel.* *Bro. 344. Case.* Wife named wrong.

Yet, if a Woman have two Husbands living, and with her second acknowledges a Fine by his Name, this Fine, it seems is void; but if a Woman levy a Fine with her right Husband, and by a wrong Christian Name, She cannot avoid such a Fine. *Bro. Fines 17. 1 Ass. pl. 7. 7 H. 4. 22.* Wife misnamed.

If

Common
Pleas.

*Feme Sole
marrying
before the
Day in
Bank.*

If a *Feme Sole*, after the *Teste* of the Writ of Covenant, and *Dedimus potestatem* to take the Cognizance of a *Fine* of her, and before the Day in Bank, to record and ingross it, marry; yet the *Fine* shall be good, and be recorded by the Name she had when *Sole*; but her Death at such Time, will make the *Fine* void.

Sixthly, By what Names the Parcels may pass, and are to be placed.

As we are here to consider by what Names the Things whereof the *Fine* is to be levied may pass, and how the Parcels are to be placed therein; it must be known, That a *Fine* may be levied of all Things whereof, either a *Præcipe quod reddat*, or *Præcipe quod faciat*, or a *Præcipe quod permittat*, or a *Præcipe quod teneat* lieth. It may be levied of Things Ecclesiastical, or Temporal, that are inheritable and in esse, at the Time of the levying the *Fine*. So a *Fine* may be levied of an

Donour,
Manor,
Mead,
Barony,
Castle,
Messuage,
Cottage,

Parsonage,
Pasture,
Wood,
Chapel,
Riber,
Chauntry,
Bartonnage,

Recto-

235

Felons Goods,
Dedand,
Hospital,
Furze,
Heath Grounds,
Snoozish Ground
Item,
Common,
Wimber,
Wiaz,
Ferry,
Franchise,
Beignfor,
Ketheron,
Coll,
Collage,
Picage,
Pontage,
Squittal,
Verbices,
Portion of A P
Blattons, and
like.

Common Pleas.

Many of these may be granted together *Many of*
in one Fine, as, 50 *Messuages*, 40 *Tofts*, one Sort
500 *Acres of Land*, and 50 s. of *Free Rent*, granted.
as Occasion requires.

So of a Dove-house, 3 Gardens, 2 l. 6 s. 4 d. Dovehouse
Rent, and of the Rent of 4 Capons, one &c. and
Pound Rent.

Common
Pleas.

Pound of *Wax*, and the like, all in one
Fine. 3 Co. 45. 6 Co. 67. 7 Co. 38.

Demesnes
&c.

Demesnes, Rents, Seigniories, Courts,
Pleas, &c. whereof a *Manor* consisteth,
pass by the Name of a *Manor* with the
Appurtenances, &c.

The Na-
ture and
Quality of
the Things

The Nature and Quality of the Things
must also be observed, as *Land*, *Meadow*,
Pasture, &c. and the Place where they lie.

Things
more wor-
thy first.

The more worthy Things must be put
first, as a *Castle* before a *Manor*; a *Manor*
before a *Messuage*; a *Messuage* before *Land*
Arable, before *Meadow*. *Flow.* 108. 7 H.
6. 39.

Things ge-
neral.

Things general before Things special, as
before *Meadow*, *Pasture*, *Wood*, *Heath*,
Marsh, &c. must be placed *Land*, being
the Genus thereto.

So *Wood* must precede *Elder-wood*, *Wil-
low Wood*, &c. as *Wood* is the Genus to
Willow Ground.

For the placing of Particulars in a Writ
of *Covenant*, it is in all Things as in a
Præcipe quod reddat of Lands.

Reg. Orig.
F. 2.

There is a Rule in the Register which
is thus set down, after this Manner.

Messuage, *Totr*, *Mill*, *Dove-house*,
Garden, *Land*, *Meadow*, *Pasture*, *Wood*,
Heath Ground, *Moorish Ground*, *Marsh*
Lands.

Lands, Elderwood; a Fishery, Quist, Common Pleas.

Also intire Things must be set before Intire
their Parts, as of the Manor of C. before Things.
the Moiety of the Manor of B. with the
Appurtenances.

Parts of Things excepted, must succeed Things ex-
those Things out of which they be except- cepted.
ed; and if there be divers Parcels in one
Writ, that Parcel, out of which the Ex-
ception is to be made, ought to be last
placed, as thus,

Of the Manor of D. with the appurte-
nances in C. except one messuage, two a-
cres of Land, and the Advowson of the
Church of C. Register of Orig. Writs.
fol. 6.

And every Thing excepted, ought to be Things ex-
certainly named; but there is no necessity cepted to be
for inserting the Words with the Appurte- certainly
nances after the Thing excepted. named.

And the Exception must always be of Of what
such Things as will lie in the Writ Regist. the Excep-
Origin. 228, 229. and of such a Thing as tion must be
is comprehended in the Writ, and it is
after this Manner.

Command A. B. that he justly perform to
C. D. the Covenant, &c. of one Messuage,
one

The ATTORNEY'S

one Cottage, and the moiety of one Messuage, and ten acres of Land with the appurtenances, except one acre of Land in E.

And then when you come to the Concord you say,

And such is the Agreement, that the said A. hath acknowledged the said Tenements with the Appurtenances (except before excepted) to be the right, &c.

But more concerning the Concord you have hereafter.

Also observe, that where the Original Writ is of many Things, they must be expressed thus, suppose it were of a Manor, House, Rectory, &c.

The Words for dividing the Things are Eight.
First, Of a Manor. — Secondly, And a Rectory. — Thirdly, Moreover of a Messuage. — For the Fourth Thing, And also; — For the Fifth, Furthermore; — For the Sixth, And further; — For the Seventh, And also; — And for the Eighth, And moreover. And if there be more, to begin again.

Again, Observe, that certain and apt Words must be used to express the Things to pass by the Fine; for a Fine levied of a Tenement, or of an Hereditament, or of two Tenements, is void; at least, voidable for Error, because of the uncertainty and

and unaptness of the Words: 1 Cro. 196. Common Pleas. Leon. 188.

For the proper Word to express a Tenement or Hereditament in a Fine, is, to call it a *Messuage*, and so two *Messuages*; &c. *Apt words.*

One *Manor* may also be a parcel of another *Manor*, and pass by the Name of that *Manor*. 20 Ass. pl. 54. *How a Manor may pass.*

Also a *Castle*, *Honour*, or *Hundred*, may be parcel of a *Manor*, and pass by the Name of the *Manor* whereof it is parcel, or it may pass by its own proper Name; as of the *Castle of A. with the Appurtenances*, or of the *Honour of A.* 1 E. 3. 4. 2 E. 3. 36. 20 Ass. pl. 54. *Castle, Honour, or Hundred.*

Also the *County*, *Town*, *Parish* or *Hamlet*, where the Things lie that are intended to pass by the *Fine*, ought to be certainly named; in 3d. Creek, 120. *Stock*, and *Foxes Case*, it is said, that if there be two *Towns*, *Walton* and *Street*, in the *Parish of Street*, and a *Fine* is levied of such Lands in *Street*, in this Case, the Lands in *Walton* will not pass by this *Fine*, *Walton* being a distinct *Town* or *Village* by itself, and although the *Parish* comprehend both, yet in the *Fine*, the Lands in *Walton* shall not be said to be comprized, unless *Walton* had been a *Hamlet* of *Street*, and *Example.*

Common
Pleas.

and that the *Fine* had been levied of Lands in the Parish of *Street*, then all would have passed well enough.

Several
Towns of
the same
Name.

If there be divers Towns of one Name in the same County, it is best to make an *Addition* for Distinction.

Manors
extending
into several
Towns.

If a *Manor* extends itself into divers Towns, as *A. B. C.* it is the best and safest Way to name all the Towns, or none of them at all; as, of the *Manor of S. in A. B. and C.* or of the *Manor of S. with the Appurtenances*; for if any one of the Towns be omitted, none of the *Manor* in that Town will pass; but it seems, that if the *Manor* be only named and not said in what Town it doth lie, the *Fine* may be good. 9 E. 4. 6.

Several
Manors of
the same
Name.

Also, where divers Manors be of one Name, with Distinction of *North* and *South*; as *North S.* and *South S.* it is good in all the Proceedings of the *Fine*, to express which of the *Manors* are intended to be passed. 1 Cro. 196. Bro. Fines 44, 91.

Fine of a
Presentation.

Vicarages
Endowed
and not En-
dowed.

When a *Fine* is but for the *Presentation* to a Church only, it must be, *Of the Advowson of the Church of S. and not with the Appurtenances.* And of *Vicarages* Endowed, the Writ must be *Of the Advowson of the Church of S. and not with the Appurtenances*: And when the *Vicarage* is not En-

Endowed, it must go under these Words, *Common Pleas.*
Of the Advowson of the Church of S. and
Parsonages, Rectories, Advowsons, Vicar- *Parsonages*
ages, and Tythes Improprate, pass not by the Rectories.
Words of the Advowson of the Church of S.
but by this, Of the Rectory of the Church of
S. West. Symb. 2 Part.

An Advowson will pass the Presentation,
either to a Vicarage or Rectory; and then it
is by the Words, Advowson of the Recto-
ry or Vicarage of the Church, (as the Case
is.)

Highwood and Underwood, pass by *Highwood*
the general Name of Wood; as, of 20 *and Under-*
Acres of Wood. West. Symb. 2 part. *wood.*

House-boot, Hay-boot, and Plow-boot, by *House-boot*
the Name of Estovers; as of reasonable E- *Hay-boot,*
stovers in Wood, (that is to say) in ten *&c.*
Acres of Wood of the said A. in D.

A Fishery may pass by the Name of a Fishery.
separate Fishery in the River of S.

A Foldage, may pass by the Name of the *Foldage.*
Liberty of a Foldage and Sheep Course with
the Appurtenances in T. or, of a free Foldage
of Sheep, with the Appurtenances in T. or,
of a free Fold Course.

A Chapel or Hospital, will pass by the *A Chapel.*
Name of a Messuage. 13 Ass. 2. *Messuage*

So by the Name of a Messuage with the *is a dwell-*
Appurtenances, a Fine may pass a *ling House,*
House *Cartilage,*
with &c.

M

with a *Shop, Curtilage, Garden, Orchard*, also a *Dove-house and Mill*, as *Parcel thereof*. Bract. lib. 5 cap. 28 Sect. 1 Plow. fol. 169. 170, 171.

*Cottage,
Toft,
Chamber,
&c.*

So by the Name of a *Cottage, a Toft, a Chamber, a Cellar, &c.* and yet these also may pass alone by their own single Names, of a *Messuage, a Curtilage*.

*Part of in-
divisible things.*

Part of an *entire Thing* may pass by the Words, *Of a Moiety, or third Part, or of two Parts in three Parts to be divided, (as the Case is) so of a Moiety of all the Tythes of Corn and Hay, of the Lands called B. with the Appurtenances in H. or the Moiety of an Advowson, which is the Right of Presenting alternatively.*

*Messuage
divided.*

So if a *Messuage* and 28 Acres of *Land* be parted, the Part divided may pass by the Name of one *Messuage* and ten Acres of *Land*, and not of a *Moiety of a Messuage* and 28 Acres of *Land*.

*A Fine of
a Mill.*

A *Fine* of a *Mill* is good without describing it, whether it be a *Windmill* or a *Watermill*; yet the latter is most usual. 44 E. 3. F. 13.

*Land, how
to be de-
manded.*

Land may be demanded by a certain number of Acres, as of *ten Acres of Land, twenty Acres of Meadow, 200 Acres of Pasture*; or by the certain measure of the specific

cifical Quantity thereof, as of a *Hide* or *Common*
an Acre, a Rood or *the Perch* or *Parts* *Pleas.*
 thereof.

In like manner, *Wood, Underwood, Heath, Wood, Un-*
Moorish Ground, Marsh Ground, may be *derwood,*
 demanded by the number of Acres there- *&c.*
 of. 16 *Afs.* 9.

Turbary is only the Right of digging *Turbary.*
Turf, and may be demanded by the Name
 of *Moorish Ground*; *Rent* may be, by the
 Quality of the Things to be rendred, with
 the particular Quantity; as *ten Pounds,*
ten Marks, twelve Shillings, Six-pence far-
thing. 21 E. 3. 44.

But *Note,* that it is usual in *Fines* to *More acres*
 comprehend rather more number of Acres *to be inser-*
 than are intended to pass; and this will not *ted than*
 hurt; for in such Case, no more shall pass *are intend-*
 than what is intended and agreed upon *ed to pass.*
 between the Parties, *Poph.* 105.

Common
Pleas.

Seventhly, Of the manner of passing
Fines.

And here 'tis to be considered,
First, *Before whom they may be acknow-
ledged, and where they are to be levied.*
And, Secondly, *The Form in which they
are to be levied.*

First, *Before whom they are to be acknow-
ledg'd, and where to be levied.*

The Persons that have a Power of taking
the Acknowledgment of Fines are, 1. *The
Court of Common Pleas, when two Judges
The Lord are present; 2. The Lord Chief Justice of
Chief Ju- the Court of Common Pleas, who hath
stice. power ex Officio to take the Acknowledg-
ment of Fines, and to certify the same
without any Commission, and out of the
Court. Jenk. Cent. Cases 4. Case 28.*

*The other
Judges.*

3. Also the other eleven Judges, and in
their Absence a Serjeant at Law may take
the Acknowledgment of a Fine; but their
Power is by a *Dedimus potestatem*; yet
their Persons are had in so much Esteem,
and so great is their Integrity in the Eye
of the Law, that the usual Practise has al-
ways been, for them to take the Acknow-
ledgment of the *Fine* without a *Dedimus*

first

first made out; after the *Fine* is acknowledged, the Party is to sue out a *Dedimus*, whereupon, they return the *Pracipe* and *Concord*, by way of certifying in what Manner the *Fine* was acknowledged; so that the *Dedimus* is rather to ratify and make complete, what before they had done for expedition sake, and for the Ease of the Party, *nunc pro tunc*.

Common
Pleas.

Besides the Lord Chief Justice of the Court of *Common Pleas*, the other Judges and Serjeants at Law, there are other Persons, who are empower'd by a Writ of *Dedimus potestatem*, directed to them for that Purpose; who ought to be Men of *Honesty* and *Integrity*, living in that part of the Country where the *Cognizors* dwell; one whereof, (*tis said*) must be a *Knight*; but he is named but for Conformity, for two of the other Persons therein named, may take the Acknowledgment of the *Fine*; and these Commissioners who have so taken such Acknowledgment, make a Return of their Authority with the Manner in which they have executed the same.

Commissioners.

This Writ of *Dedimus potestatem* doth suppose, that the Parties that are to acknowledge the *Fine*, are not able to travel to *Westminster* to acknowledge the same, and therefore the Commissioners are authorized

The Tenor
of the *Dedimus*.

Common
Pleas.

rized to take the Acknowledgment; and this they may take from them altogether at once, or at different Times and in several Places, as they please.

Dedimus
must be taken before two Commissioners at least, and the Commission is made to several, but never to them jointly.

But if the *Dedimus* be to two jointly to do it, one of them in this Case ought not to do it alone; or if it be to three jointly, two of them ought not to do it; for it will be Error: Therefore Care must be taken concerning their joint and several Powers: So if one of the *Cognizors* be one of the Commissioners, and he himself take it, it is Error. *Fitz. N. B.* 146, 147. *Dyer* 220. 1 *Cro.* 249.

When Fines are to be levied.

The Statute of the 18 of *Edw. 1.* call'd *modus levandi Fines*, ordains, that they shall be levied before the Justices of the Court of Common Pleas, and not elsewhere; so that my Lord *Coke* says, in his 2d. *Institutes* 515. that a Fine cannot be levied to have the Force of a Fine and Concord, by any that hath Power to hold Pleas, but only before the Justices of the Court of Common Pleas, or before Justices in *Eyre* while they stood, and not elsewhere; and therefore the King cannot grant Power to hold Plea for the levying of Fines against this Negative Statute.

Second-

Secondly, *The Form in which they are to be levied.*

How to acknowledge a Fine at the Bar.

You must make your *Præcipe* in Paper for the Cursitor of the County to make the Writ of Covenant, and having receiv'd it from him Sealed, then write a *Præcipe* and *Concord* thereof on Parchment, and deliver both to one of the Serjeants at the Bar, the Cognizors being also present; Then the Serjeant will desire the Justices to record the Appearance, which being granted the Serjeant saith, *The King's Money*. Then answereth the Second Prothonotary, or his Clerk, *What will he give?* Then the Serjeant will answer thus, *What he pleases to have?* Then the Second Prothonotary, or his Clerk answereth again, *Draw the Agreement*. Then the Serjeant will say, *With your Leave, or may it please you, The Agreement is such, (to wit)* — reciting the Substance of the Concord, with relation to the Lands in the *Præcipe*; and after that, if any of the Cognizors be Feme Covert or married Women, the Serjeant will direct her to go up to the Puisne Judge at the Bench to be examined of her Consent to part with her

Common
Pleas.

Right in the Land, if whether she doth it freely or by Compulsion; and then the Judge taketh the Concord in Parchment and examineth her privately apart, whether she voluntarily and without any Compulsion is willing to pass that Fine; and that done it is delivered to the Pothonotary to be recorded; this was the antient Method, but now part of this Ceremony is omitted, as to the Serjeant's reciting the Caption.

After it is recorded you must pay the Fees of the Court, and then take the *Præcipe* and *Concord* and annex thereto the Writ of Covenant and pass it through the several Offices, as is hereafter directed.

Of the Acknowledgment of a Fine before the Lord Chief Justice.

The Method of suing out a Fine to be taken before the Lord Chief Justice is thus, *viz.* You first draw your *Præcipe* and *Concord* in this Form and ingross the same on Paper to be acknowledg'd, which the Parties must Sign; and for expedition's sake ingross a Duplicate thereof on Parchment, which the Parties need not Sign.

Devon-

POCKET COMPANION. 249

Devonshire ss. Command John Stibbs Common¹
that he justly and without delay per- Pleas.
 form to Richard Roe the Covenant
made between them, of a Messuage,
two Gardens, twenty Acres of Land,
ten Acres of Meadow, and ten Acres
of Pasture, with the Appurtenances
in S. and unless, &c.

And the Agreement is such, (to wit) that
the said John hath acknowledg'd the said
Tenements with the Appurtenances, to be the
Right of him the said Richard, as those
which the said Richard hath of the Gift of the
said John; and those he hath remised and
quit-claim'd from him and his Heirs, to the
said John and his Heirs for ever. And more-
over, the said John hath granted for himself
and his Heirs, that they will warrant to the
said Richard and his Heirs the Tenements
aforsaid, with the Appurtenances, against him
the said John and his Heirs. And for this, &c.

Note; These Words, against the said
 John and his Heirs, signifie, that they will
 warrant the said Tenements against any
 claim to the same, to be made by the said
 John and his Heirs: And the meaning of
 these Words, And for this, &c. is, that for
 the Acknowledgment of this Fine, a Sum of
 Money (which is supposed to be the Considera-

Common
Pleas.

tion of the agreement given to the Conuzor by the Conuzee) in true Sterling Money.

You must also write the Caption underneath the Concord.

Taken and acknowledged, on the first Day of June, in the sixth Year of the Reign of his present Majesty George the Second, King of Great Britain, &c. Before me,

R. Eyre.

And the Cognizor or Cognizors, must subscribe his or their Name or Names, underneath the Paper Concord, towards the Right Hand thus,

Timothy Vendorland.
Sarah Vendorland.
Ralph Needy.

When the Fine is thus acknowledged, you carry the *Pracipe* and *Concord* to the Curfitor of the proper County, who makes you out a Writ of Covenant in this Form,

GEORGE the Second, by the Grace of God King of Great Britain, France and Ireland, Defender of the Faith, &c. To the Sheriff of Devonshire, Greeting. Command John Stiles that Justly and without Delay, he perform the Covenant with Richard Roe, made between them, of one Messuage, two Gardens, twenty Acres of Land, ten Acres of Meadow, and ten Acres of

of Pasture with the Appurtenances in S. and Common
 unless he shall so do, and the said Richard Roe shall give Security that his Suit shall be
 prosecuted; then Summon by good Summon-
 ers the said John, that he be before our Ju-
 stices at Westminster, on the Octave of St.
 Hillary, to shew, wherefore he will not. And
 have you there the Summoners and this
 Writ. Witness Our Self at Westminster,
 on the tenth Day of January, in the sixth
 Year of Our Reign.

When you have got this Writ from the
 Curfitor, you carry it to the *Alienation*
Office and give it to the Commissioners,
 and they will compound it for you; that
 is, they will set with a Mark on the Back
 of it what Fine you shall pay to the King
 for leave to alienate those Lands; and then
 you pay the Money to the Receiver, who
 now is Mr. *Saunderson*, Deputy to *William*
Jessop, Esq; which, when done, you leave it
 at the *Alienation Office* to be pass'd there, by
 entring the Names, Parcels, &c. in the Books
 kept for that purpose: And then the Clerk of
 that Office gets the proper Hands indorsed
 thereon; which must be signed by two of
 the Commissioners, and so likewise indorsed
 by the proper Officer for that purpose.

And

Common
Pleas.

And observe, if it be in Term-Time, the Commissioners sit at the *Alienation Office* from Nine till Ten in the Morning, to compound the Writs of Entry and Covenant, and for one Week after every Term; but if it be in the Vacation, you must then go to their Houses or Lodgings and get it compounded, and carry it afterwards with the Composition Money to be enter'd with Mr. *Saunderson*, the Receiver of the King's Fines.

And after having pass'd your Writ of Covenant at the *Alienation Office*, you get it returned with the proper Officer for that purpose, who returns the Names of the Pledges that were given for the prosecution of the Suit, and of the Summoners that were supposed to have summon'd the *Deforciant*; for which you pay 1s. 6d.

Your Writ being thus returned, you carry it to the Clerk of the Warrants and Inrollments, now Mr. *Eyre* in *Symonds Inn*, and there file your Warrants of Attorney for the Plaintiff, in this Manner.

Devop-

Devonshire. *ff.* John Stiles puts in Common Pleas
 his *stead* Robert Martin his Attorney, to prosecute a Writ of Covenant
 against Richard Roe, of Lands and
 Tenements in Barnstable in the Coun-
 ty aforesaid.

When this is done, you annex the *De-
 dimus* (if any) and the *Caption* to the Writ
 of Covenant, and carry the same to the
Custos Brevium Office in Number Three
 Brick Court in the *Middle-Temple*; and
 they make an Entry of the Plaintiff and
 Deforciant's Names, and of the Place where
 the Lands lie, in their Books kept for that
 purpose; for which you pay 3*s.* 8*d.* and
 if it be after the *Essoin Day* of another
 Term, you pay 1*s.* 8*d.* more; and so 1*s.* 8*d.*
 a Term for a *post Terminum* of every Term
 but the first.

When your Fine is past at that Office,
 the next Place you carry it to, is to the
King's Silver Office, now at the next Cham-
 bers to the Crown Office by *Harcourt*
 Buildings in the *Inner Temple*; and there
 they make an Entry of the Writ of Cove-
 nant, the Day of the Caption, the Fine to the
 King, &c. and deliver Duplicates of their
 Entries to the Clerk of the Warrants and
 Inrollments, in order for him to enter the
 same.

Common
Pleas.

same upon Estreat Rolls, which are by the *puisne* Judge of the Common Pleas, accompanied by the said Clerk of the Warrants carried up into the Exchequer, in order for process to be made out to the several Sheriffs of the respective Counties where the Lands lie, to collect or levy the *Post Fines*.

When your Fine has pass'd the King's *Silver Office*, you must carry it to the *Chirographer* in *Hare-Court*, and pay for the same in Term-Time 5 s. 8 d. in the next Vacation 6 s. 2 d. and if it be of another Term, you pay there 1 s. 8 d. more for a *post Terminum*, and he delivers your Fine to the proper Clerk of the County where the Lands lie, who makes you out a pair of Indentures thereon; for which you pay him according to their length.

The Manner of acknowledging a Fine before Commissioners.

Make a Copy of the *Pracipe* on Paper with the Commissioner's Names under-written, and deliver the same to the *Cursitor* of the County, who will thereby make out your *Dedimus Potestatem* and get it Sealed for you.

Then deliver the *Dedimus Potestatem* under Seal, to the Commissioners with the
Prac

Præcipe and *Concord* engross'd on Parchment. Common Pleas.

The Commissioners ought to take Care that they know the Cognizors and their Fitness and Capacity to be so; and if Husband and Wife be Cognizors, she is to be examined solely and apart, whether She does it of her own free Will, or by Threats or Compulsion.

The Acknowledgment being taken, the Commissioners must return the *Dedimus Potestatem* thus,

The Execution of this Commission, appears in a Shedule hereto annex'd.

And then fixing the Concord to the back of the *Dedimus*, the Commissioners must Set their Handsto the Caption, and also to the *Dedimus* under the return thereof.

The Caption also must be entred under the Concord, and the Commissioners Names subscribed thus,

Taken and acknowledg'd the sixteenth Day of September, in the fifth Year of the Reign of his present Majesty George the Second, King of Great Britain, &c.
Before us,

A. B.

C. D.

The Caption is first in Course.

Your

Common
Pleas.

Your *Dedimus* being returned, carry it to the Curfitor of the proper County, and he will make the Writ of Covenant; and then pass the Fine as before is directed. And *Note*, That one of the Commissioners, or some other Person who saw the Fine duly taken, must make Oath thereof before a Judge of the Common Pleas, whose Clerk thereupon writes an *Allocatur*, which is signed by the Judge, viz.

Upon the Oath of A. B.
Gentleman, (One of the
Commissioners) of the due
Execution of this Fine.

Let it pass.

A. D.

Note; The Commissioners are to return their *Dedimus* with the Concord annex'd, within one Year next after the taking the same Conusance at farthest, and if they refuse to return or cettify this, the Party grieved by it, may by a Writ called *Cognitionibus admittendis*, or a *Certiorari*, compel that Commissioner that hath it in his Custody, or his Executor, or Administrator, if he be dead, to certify it. *Stat. 23. El. cap. 3. Dyer 220, 246, 320. Fitz. U. B. 147. Co. 5. 39.*

Next

Next I shall proceed to the Forms of ^{Common} *Præcipes* and *Concords*; and First we will observe the Form of each of the four Sorts of Fines before-mentioned, *viz.*

The Form of a Fine *sur Conuzance de droit come ceo, que il ad de son done, &c.*

Norfolk ss. Command A. B. that he Justly and without Delay, perform to C. D. the Covenant made between them of one Messuage, one Cottage, and ten Acres of Pasture, with the Appurtenances in E. And unless, &c.

And the Agreement is such, (that is to say) that the said A. hath acknowledg'd the said Tenements with the Appurtenances, to be the Right of the said C. as that which the said C. hath of the Gift of the said A. and those he hath remised and quit-claim'd, from him and his Heirs, to the aforesaid B. and his Heirs for ever. And moreover, the said A. hath granted for himself and his Heirs, that they will warrant to the said B. and his Heirs, the said Tenements with the Appurtenances, against the said A. and his Heirs for ever. And for this, &c.

The

Common
Pleas.

The Form of a Fine for Done Grant and Render, otherwise call'd a Double Fine.

Middlesex. ss. Command A. B. that he Justly and without Delay, perform to C. D. the Covenant made between them, of the Manor of A. with the Appurtenances, &c. And unless, &c.

And the Agreement is such (to wit) that the said A. hath acknowledg'd the said Manor with the Appurtenances, to be the Right of him the said C. as that which the said C. hath of the Gift of the said A. and that he hath remised and quit-claim'd, from him the said A. and his Heirs, to the said C. and his Heirs; And moreover, the said A. hath granted for himself and his Heirs, that they will warrant to the said C. and his Heirs, the aforesaid Manor with the Appurtenances, against the said A. and his Heirs for ever; And for this Acknowledgment, Remise, Quit-claim, Warranty, Fine and Agreement, the said C. hath granted to the said A. and his Heirs the annual Rent of ten Pounds, issuing out of the said Manor, with the Appurtenances; and that he hath rendred to him, &c. for him the said A. and his Heirs, to have and receive the said Rent, at the Feasts of the Annunciation of the Blessed Virgin Mary, Sains

Saint Michael the Archangel, by even and equal Portions to be paid yearly for ever. Common Pleas.

And if it shall happen that the said Rent of ten Pounds be in arrear in part or in all after any of the said Feasts whereupon it ought to be paid, that then it shall be lawful for the said A. and his Heirs to enter into the said Manor, with the Appurtenances, and Distrain and lawfully to carry and drive away, and retain in his own Possession the Distress thereto taken and had, until the said Rent of ten Pounds with the arrears thereof, if any be, shall be fully paid and satisfied.

The Form of a Fine sur Conuzance de droit tantum.

Middlesex. ff. Command A. B. and C. his Wife, that they justly perform to C. D. the Covenant made between them, of the third Part of three Messuages, three Tofts, three Gardens, two Hundred Acres of Land, sixty Acres of Meadow, and one Hundred Acres of Pasture, with the Appurtenances in T. G. and H. And unless, &c.

And the Agreement is such, (to wit) that the said A. and C. have acknowledged the said third Part with the Appurtenances,

Common
Pleas.

to be the Right of the said D. and have granted that the said third Part with the Appurtenances, (which J. R. Widow, at the Day when this Agreement was made, holds for the Term of her Life) of the Inheritance of the said C. and which after the Death of the said J. R. ought to revert to the said A. and C. mediatly after the death of the said J. R. shall remain to the said D. and his Heirs for ever; To hold, &c. And moreover the said A. and C. have granted for themselves and the Heirs of the said C. that they will warrant to the said D. and his Heirs, the said third Part with the Appurtenances, (as aforesaid) against them the said A. and C. and the Heirs of the said C. for ever. And for this, &c.

A Lease for Years, by a Fine sur Concessit.

Bucks. ss. Command T. B. that he Justly, &c. perform to G. R. the Covenant made between them, of one Messuage, and 24 Acres of Land, with the Appurtenances in D. And unless, &c.

And the Agreement is such, (that is to say) or (to wit) that the said T. hath granted to the said G. the said Tenements with the Appurtenances, To have and to hold,

hold, to the said G. from the Feast of Common
 Saint Michael the Archangel last past, Pleas.
 until the full End and Term of twenty one
 Years, from thence next ensuing, and jully
 to be compleat and ended; yielding there-
 fore yearly, during the said whole Term, to
 the said E. and his Heirs, ten Pounds of law-
 ful Money of Great Britain, to be paid at
 the Feasts of the Annunciation of the Blessed
 Virgin Mary and Saint Michael the Arch-
 angel, by even and equal Portions. And if
 it shall happen, the said Rent to be in Ar-
 rear and unpaid in part or in all, after any
 of the said Feasts; then it shall be lawful for
 the said T. and his Heirs to enter into the
 said Tenements, with the Appurtenances, and
 distrain, and to drive and carry away the
 Distress there taken, and retain the same
 until they shall be fully paid and satisfied of
 the said Rent, and the Arrears of the same.
 And furthermore, the said T. and his Heirs,
 warrant to the said G. the said Tenements,
 with the Appurtenances, against the said T.
 and his Heirs, during the said whole Term.
 And for this, &c.

Taken and acknowledg'd (as above.)

A Fine

Common
Pleas.

A Fine from a Man and his Wife to One,
Of a Manor, Land, Meadow and Pasture,
upon a Grant for 99 Years without Im-
peachment of Waste, rendring a Pepper
Corn with Warranty against the Heirs
of the Husband.

Somerſetſhire. *ſſ. Command A. B. and M.*
his Wife, that they Juſtly, &c. per-
form to G. B. Eſquire, the Covenant
made between them, of the Manor of
M. with the Appurtenances; and of
200 Acres of Land, 300 Acres of
Meadow, and 200 Acres of Pasture,
with the Appurtenances in M. And
unleſs, &c.

And the Agreement is ſuch, (that is to
ſay) that the ſaid R. and M. have granted
to the ſaid E. the ſaid Manor and Tenements
with the Appurtenances, To have and to
hold, to the ſaid E. from the Feaſt of Saint
Michael the Archangel, laſt paſt, until
the End of the Term of ninety nine Years
from thence next enſuing, and fully to be com-
pleat and ended, without Impeachment of
Waſte; yielding therefore Yearly, to the ſaid R.
and M. and the Heirs of the ſaid R. a Pep-
per-Corn; at the Feaſt of the Nativity of
St.

St. John the Baptist, (if demanded.) And Common Pleas, they the said R. and M. and the Heirs of the said R. warrant to the said E. the said Manor and Tenements with the Appurtenances, (as aforesaid) against them the said R. and M. and the Heirs of the said R. during the Term aforesaid. And for this, &c. Taken and acknowledg'd (as above.)

A Fine sur Concessit from two Cognizors to one Cognizee, of divers Manors, Tenements, and of Common of Pasture, and a Rectory to hold to the Cognizee for 60 Years, if the Cognizors, or either of them so long live; without Impeachment of Waste; rendring the yearly Rent of a Pepper-Corn (if demanded.)

Norfolk. ss. Command R. R. Baronet and S. his Wife, that they Justly, &c. perform to T. Y. the Covenant made between them, of the Manor of P. L. L. H. S. W. B. B. E. otherwise E. otherwise W. B. and H. with the Appurtenances; and of thirty Messuages, three Mills, three Gardens, thirty Orchards, 800 Acres of Land, 100 Acres of Meadow, 200 Acres of Pasture, 100 Acres of Wood, 1000 Acres

The ATTORNEY'S

Acres of Furze and Heath, and Common of Pasture, with the Appurtenances in Paston, Happesburgh, (so naming all the rest of the Places where the Lands lie) and also of the Rectory of Paston with the Appurtenances; And unless, &c.

And the Agreement is such, (that is to say) that the said R. and R. have granted to the said T. the said Manors, Tenements, Common of Pasture, and Rectory, with the Appurtenances, To have and to hold, to the said T. from the Feast of the Birth of our Lord Christ, last past, until the End of the Term of 60 Years from thence next ensuing, and fully to be compleat and ended, if they the said R. and R. or either of them, shall so long live, without any Impeachment by reason of any Waste; yielding and paying therefore Yearly, to the said R. and R. one Grain of Pepper, at the Feast of Saint Michael the Archangel, in every Year during the continuance of the whole Term aforesaid, if demanded, and if the said R. and R. or either of them, shall so long live: And the said R. and R. and the Heirs of the said R. (the Husband) will warrant to the said T. the said Manors, Tenements, Common of Pasture, and Rectory with the Appurtenances

ces as aforesaid, during the said whole Term, ^{Common} if the said R. and R. or either of them shall ^{Pleas.} so long live. And for this, &c.

Taken and acknowledg'd (as above.)

A Fine sur Concessit from Husband and Wife Cognizors to one Cognizee, of an annual Rent of six Pounds and a Mark, issuing out of several Messuages in London, for a Term of 99 Years, if the Wife shall so long live.

London. *J. Command William Pierfon and Elizabeth his Wife, that they Justly, &c. perform to Robert Smith, Esquire, the Covenant made between them, of an annual Rent of six Pounds thirteen Shillings and four Pence, issuing out of four Messuages with the Appurtenances, in the Parish of St. John the Evangelist: And unless, &c.*

And the Agreement is such, (that is to say) that they the said William and Elizabeth have granted to the said Robert the said Rent, to have and receive the same, to the said Robert, from the Feast of St. Michael the Archangel, last past, until the end of the Term of 99 Years from thence next

N

ensu-

Common
Pleas.

ensuing, and fully to be compleat, (if the said Elizabeth shall so long live.) And the said William and Elizabeth warrant to the said Robert the said Rent, (as aforesaid) against the said William and Elizabeth, during the whole Term aforesaid, (if the said Elizabeth shall so long live.) And for this, &c.

Taken and acknowledg'd (as above.)

A Fine sur Conusance de droit from One
to Two.

And the Agreement is such, (that is to say) that the said A. hath acknowledg'd the said Tenements and Common of Pasture, with the Appurtenances, to be the Right of the said Henry, as those which the said Henry and Robert have of the Gift of the said A. and those he hath released and quit-claim'd, from him and his Heirs, to the said H. and R. and the Heirs of the said H. for ever. And moreover, the said A. hath granted for himself and his Heirs, that they will warrant to the said H. and R. and the Heirs of the said H. the said Tenements and Common of Pasture, with the Appurtenances, against the said A. and his Heirs for ever; And for this, &c.

By

By Two to Two, with a Warranty against the Conuzors and the Heirs of one, to the Cognizees and the Heirs of one.

And the Agreement is such, (that is to say) that the said T. and W. (the Conuzors) have acknowledg'd the said Manor, Tenements, Rents and Commons, with the Appurtenances, to be the Right of the said P. as those which they the said P. and S. (the Cognizees) have of the Gift of the said T. and W. and those they have remised and quit-claim'd, from them the said T. and W. and the Heirs of T. to the said P. and S. and the Heirs of the said P. for ever. And moreover the said T. and W. have granted for themselves and the Heirs of the said T. that they will warrant to the said P. and S. and the Heirs of the said P. the said Manor, Tenements, Rent and Common, with the Appurtenances, against the said T. and W. and the Heirs of the said T. for ever.

N s

A Fine

By

Common
Pleas.

A Fine *sur Concessit* for Ninety-nine Years, if the Wife of the First Cognizor so long live, of a Manor, Burrough, Messuages, Tofts, Mills, Gardens, Land, Meadow, Pasture Wood, Furze and Heath, Rent, Common of Pasture, for all Cattle, a Rectory, and the Advowson of a Church,

Wiltshire ss. Command Sir R. H. Knt. and H. his Wife, J. M. Esquire, and R. C. Esquire, that they Justly, &c. perform to J. W. Gentleman the Covenant made between them, of the Manor of W. B. otherwise W. V. with the Appurtenances, and of the Burrough of W. B. otherwise O. W. and also of 200 Messuages, 40 Tofts, 2 Mills, 2 Gardens, 1000 Acres of Land, 1000 Acres of Meadow, 1000 Acres of Pasture, 1000 Acres of Wood, 1800 Acres of Furze and Heath, Rent of 10l. 19s. 9d. $\frac{1}{2}$ and Common of Pasture for all Cattle, with the Appurtenances in W. B. &c. (naming the Places,) and also the Rectory of W. B. otherwise O. W. with the Appurtenances; and the Advowson of the Church of W. B. otherwise O. W. And unless, &c.

And

And the Agreement is such, (that is to Common Pleas.) that the said R. H. and H. J. and R. C. have granted to the said J. W. the said Manor, Burrough, Tenements, Rent, Common of Pasture, and Rectory, with the Appurtenances; and the Advowson aforesaid, to have and to hold, to the said J. W. from the Feast of Nativity last past, until the End of the Term of 99 Years, from thence next ensuing, and fully to be compleat, if the said H. shall so long live; yielding and paying therefore, to J. M. and R. C. the yearly Rent of a Pepper-Corn, at the Feast of St. Michael the Archangel, in every Year during the said Term, (if required,) if the said H. shall so long live: And the said R. H. and H. and the Heirs of the said R. warrant to the said J. W. the said Manor, &c. (here again naming the Parcels as aforesaid) during the said Term, if the said H. shall so long live. And the said J. M. his Heirs, warrant to the said J. W. the said Manor, &c. (here again naming the Parcels) during the said Term, if the said H. shall so long live. And lastly, the said J. C. warrant to the said J. W. the said Manor, &c. (here again naming the Parcels as aforesaid) during the said Term,

Common
Pleas.

if the said H. shall so long live. And for this, &c.

*Taken and acknowledg'd
the 18th of December,
in the sixth Year of his
present Majesty's Reign.
Before us,*

A. B.

C. D.

A Writ of Covenant, of Common.

*Command, &c. of three Messuages, &c.
with the Appurtenances in D. and Y. of a
Common of Pasture for 400 Sheep, with the
Appurtenances in D. in the Parish of C.
And unless, &c.*

Of Land, and Sheep Walk.

*Command, &c. of one Messuage, one Cot-
tage, one Garden, &c. and a Rent of five
Pounds, with the Appurtenances in F. also
of the Liberty of Foldage, and of a Sheep
Walk, with the Appurtenances in F. And
unless, &c.*

Of

Of Wood, and Foldage.

Command, &c. of one Hundred Acres of Wood, and the Liberty of Foldage for 40 Sheep, with the Appurtenances in it and S. And unless, &c.

Of Wood.

Command, &c. of, and three Roods of Wood, &c. in the Parishes of B. and L. &c.

Or two Parts in three Parts to be divided.

Command, &c. of two third Parts in three Parts to be divided, of eight Acres of Land, forty Acres of Pasture, forty Acres of Fresh and Moorish Land, with the Appurtenances in D. &c. And unless, &c.

Of a Parsonage Improprate, and of the Moiety of the Tythes.

Command, &c. of the Rectory Improprate of H. with the Appurtenances; and of the Moiety of all the Tythes of Corn, Grain and Hay, arising, growing or renewing, in H. aforesaid, to the said Rectory belonging, &c. And unless, &c.

Common
Pleas.

Of a Manor, Rent, Free-Foldage for Sheep, and a Hundred.

Command, &c. of the Hundred of, and the Manor of, &c. and a Rent of ten Shillings, and of a Free Foldage, with the Appurtenances in R. And unless, &c.

A Writ of Covenant, of three Parts of four Messuages, four Cottages, &c. and of the third Part of the Rectory of the Church of K.

Command W. S. that he perform to C. D. the Covenant made between them, of three fourth Parts of four Messuages, four Cottages, one Mill, ten Gardens, ten Orchards, 200 Acres of arable Land, 200 Acres of Meadow, 200 Acres of Pasture, 30 Acres of Moor, 30 Acres of Turbary, with the Appurtenances in A. B. C. D. and of the third Part of the View of Franck-pledge, of the Goods and Chattles of Waifes of Fugitives put in Exigent, Felons de se Deodands, Treasure Trove, Estrays, with the Appurtenances in M. &c. also of the third Part of the Rectory of the Church of K. with the Appurtenances. And unless, &c.

A Fine

A Fine sur Cognizance de droit, come ceo, &c.
By One to One of a Messuage and
Lands.

Norfolk ss. Command A. B. that he
Justly, &c. perform to C. D. the
Covenant made between them, of one
Messuage, two Gardens, twenty Acres
of Land, ten Acres of Meadow, and
ten Acres of Pasture, with the Ap-
purtenances in S. And unless, &c.

And the Agreement is such, (that is to
say) that the said A. hath acknowledg'd the
said Tenements, with the Appurtenances, to
be the Right of the said C. as those which
the said C. hath of the Gift of the said
A. And those he hath remised and quit-
claim'd, from himself and his Heirs, to the
said C. and his Heirs, for ever. And more-
over, the said A. hath granted for himself
and his Heirs, that they will warrant to the
said C. and his Heirs, the said Tenements,
with the Appurtenances, against the said A.
and his Heirs for ever. And unless, &c.

N. y.

By.

Common
Pleas.

By One to Two, of two Messuages,
Lands, and Common of Pasture.

Suffolk ff. Command A. B. that he
Justly, &c. perform to C. D. or
E. T. the Covenant made between
them, of two Messuages, five Gardens,
one Hundred Acres of Land, and
two Hundred Acres of Wood, and
Common of Pasture for all Cattle,
with the Appurtenances in M. and B.
And unless, &c.

And the Agreement is such, (that is to
say) that the said A. hath acknowledg'd the
said Tenements and Common of Pasture, with
the Appurtenances, to be the Right of the said
C. as those which the said C. and D. have
of the Gift of the said A. and those he
hath remised and quit-claim'd, from him
and his Heirs, to the said C. and E. and
the Heirs of the said C. for ever. And
moreover the said A. hath granted for him-
self and his Heirs, that they will warrant to
the said C. and E. and the Heirs of the said
C. the said Tenements and Common of Pasture,
with the Appurtenances, against the said A.
and his Heirs for ever: And for this, &c.

By

By Two to Two, of a Manor, Lands,
Rent and Common, with a Warranty
against the Cognizor and the Heirs of
One, to the Cognizee and the Heirs
of One.

Devonshire. *ss. Command A. B. and C.
D. that they Justly, &c. perform to
E. F. and G. H. the Covenant made
between them, of the Manor of D.
with the Appurtenances, and of seven
Messuages, &c. (mentioning the
other Lands) with the Appurtenan-
ces in D. C. O. And unless, &c.*

*And the Agreement is such, (that is to
say) that they the said A. and C. have ac-
knowledg'd the said Manors, Tenements,
Rent and Common, with the Appurtenances,
to be the Right of the said E. as those which
they the said E. and G. have of the Gift of
the aforesaid A. and C. and those they have re-
mised and quit-claim'd, from them the
said A. and C. and their Heirs, to the said E.
and G. and the Heirs of the said E. for ever.
And moreover, they the said A. and C. have
granted for themselves, and the Heirs of the said
A. that they will warrant to the said A. and
C. and to the Heirs of the said A. the said
Manor,*

Common:
Pleas.

Manor, Tenements, Rent and Common of Pasture, with the Appurtenances, against the said A. and C. and the Heirs of the said A. for ever. And for this, &c.

By Husband and Wife, of the Husband's Land.

Shury ss. Command A. B. and C. his Wife, that they Justly, &c. perform to D. E. the Covenant made between them, of two Messuages, two Tofts, four Acres of Land, (naming the rest of the Parcels) with the Appurtenances in G. And unless, &c.

And the Agreement is such, (that is to say) that the said A. and C. have acknowledged the said Tenements with the Appurtenances, to be the Right of the said D. as those which he the said D. hath of the Gift of the said A. and C. and they have remised, and for ever quit-claim'd them, from them the said A. and C. and the Heirs of the said A. to the said D. and his Heirs for ever. And moreover, they the said A. and C. have granted for themselves, and the Heirs of the said A. that they will warrant to the said D. and his Heirs, the said Tenements, with the Appurtenances, against the said A. and

and C. and the Heirs of the said A. for Common
ever. And for this, &c. Common
Pleas.

By the Husband and Wife, of the Wife's
Land.

Suffolk ss. Command A. B. and C. his
Wife, that they Justly, &c. perform
to D. E. the Covenant made between
them, of one Messuage, with the Ap-
purtenances in St. Edmund's Bury.
And unless, &c.

And the Agreement is such, (that is to
say) that the said A. and C. have acknow-
ledg'd the said Messuage with the Appurte-
nances, to be the Right of the said D. as
those which the said D. hath of the Gift of
the said A. and C. and they have remised
and quit-claim'd it, from them the said
A. and C. and the Heirs of the said C. for
ever; to the aforesaid D. and his Heirs for
ever. And moreover, they the said A. and
C. have granted for themselves, and the
Heirs of the said C. that they will warrant
to the said D. and his Heirs, the said Mes-
suage, with the Appurtenances, against the
said A. and C. and the Heirs of the said C.
for ever. And for this, &c.

A Re-

Common
Pleas.

A Release by Fine, by One to Two.

Surry J. Command W. W. that he
Justly, &c. perform to L. and A. P.
the Covenant made between them, of
six Messuages, &c. with the Appur-
tenances in C. W. and E. &c. And
unless, &c.

And the Agreement is such, (to wit) that
the said W. hath acknowledg'd the said Te-
nements, with the Appurtenances, to be the
Right of the said L. as those which the said
L. and A. have of the Gift of the said W.
and those he hath remised and quit-claim'd,
from him and his Heirs, to the said L. and A.
and the Heirs of the said L. for ever. And fur-
ther, the said W. hath granted for himself
and his Heirs, that they will warrant to the
said L. and A. and the Heirs of him the said
L. the said Tenements, with the Appurte-
nances, against the said W. and his Heirs
for ever. And for this, &c.

A Fine

Common
Pleas.

A Fine sur Cognizance de droit, by the
Husband and Wife, to Two.

Surry ss. Command J. T. and A. his
Wife, that they Justly, &c. perform
to W. R. and R. D. the Covenant
made between them, of four Messua-
ges, four Tosts, forty Acres of Ara-
ble Land, twenty Acres of Meadow,
One hundred and twenty Acres of Pa-
sture, and five Shillings and Four-
pence Rent, with the Appurtenances
in S. And unless, &c.

And the Agreement is such, (to wit) that
the said J. and A. have acknowledg'd the
said Tenements, with the Appurtenances, to
be the Right of him the said W. as those
which the said W. and R. have of the Gift
of the aforesaid J. and A. and those they have
remised and quit-claim'd, from the said J.
and A. and the Heirs of him the said J.
to the said W. and R. and the Heirs of
the said W. for ever. And moreover, the
said J. and A. have granted for themselves,
and the Heirs of the said J. that they will
warrant to the aforesaid W. and R. and
the Heirs of the said W. the said Tene-
ments, with the Appurtenances, against the
said

Common
Pleas.

said J. and A. and the Heirs of him the said J. for ever. And for this Acknowledgment, Remise, Quit-claim, Warranty, Fine and Agreement, the same W. and R. have given to the aforesaid J. and A. 240 l. Sterling:

A Fine sur Conuizance de droit come ceo, &c. from C. D. Husband and Wife, to A. B. with two several Warranties: 1. By the Husband, against him and his Heirs: 2. By the Husband and Wife, against the Heirs of the Wife.

Hertford ss. Command Thomas Price, and Jane his Wife, that they Justify, &c. perform to A. B. the Covenant made between them, of ten Acres of Land, in the Town of Hertford. And unless, &c.

And the Agreement is such, (to wit) that they the said Thomas and Jane, have acknowledged the said Tenements, with the Appurtenances, to be the Right of the said A. as those which the said A. hath of the Gift of the said T. P. and Jane; and they have remised and quit-claim'd the same, from them the said T. P. and their Heirs, to the said A. and his Heirs, for ever. And moreover, the said T. hath granted for himself

self and his Heirs, that they will warrant Common
Pleas.
to the said A. and his Heirs, the said Tenements, with the Appurtenances, against him the said T. and his Heirs for ever. And further, the said T. and J. have granted for themselves, and the Heirs of the said J. that they will warrant to the said A. and his Heirs the said Tenements, with the Appurtenances, against the said T. and J. and the Heirs of the said J. for ever. And for this, &c.

Of divers Honors, Castles, Manors, Parks; several Messuages, Cottages, and a great Variety of Parcels placed in their proper Order.

Devonshire ff. Command Sir E. S. Baronet, and A. his Wife, and E. S. Esq; Son and Heir apparent to the said E. and M. his Wife, and E. S. that they Justly, &c. perform to R. E. Gentleman, and G. L. Gentleman, the Covenant made between them, of the Honours of T. B. and P. with the Appurtenances, and of the Castles T. B. and P. with the Appurtenances; moreover of the Parks of T. B. and P. with the Appurtenances; and also of ninety Messuages, forty Cottages, five Mills, two Dove-houses, one thousand two hundred Acres of Land,
five

The ATTORNEYS

five hundred Acres of Meadow, one thousand eight hundred Acres of Pasture, two hundred Acres of Wood-
Land, one thousand four hundred Acres of Furze and Heath, one hundred Acres of Marsh Land, a Rent of twenty Pounds, Common of Pasture, View of Frankpledge, and whatsoever belongs to the View of Frankpledge; a Knight's Fees, Wards, Marriages, Escheats, Goods and Chattles of Waifs, Estrays; Goods and Chattles of Felons, Fugitives, Outlaws, Persons attainted, Felons of themselves, Deodands, Treasure, Fairs, Markets, Wrecks of the Sea, and Free Warren, with the Appurtenances in T. N. (mentioning the Towns and Places where the Lands lie, &c.) and of a Free Fishery in the Waters of D. H. and T. Moreover, of the Advowson of the Church of D. P. and also of a Moiety of the Manor of H. otherwise H. with the Appurtenances; Escheats, Goods and Chattles of Waifes, Estrays, of the Goods and Chattles of Felons, Fugitives, Outlaws, Persons attainted; of the Fairs, Markets, Wrecks of the Sea, and of a Free Warren, with the Appurtenances in H. otherwise H. And of a fourth Part of the Hundred of H. with the Appurtenances. And also of the eighth Part of a Barn, with the Appurtenances, in D. And unless, &c.

Wilt.

Common
Pleas.

Wiltshire ff. *Command the same Persons, that they Justly and without Delay, perform to the same Persons, the Covenant made between them, of the Manor of Maiden Bradley, with the Appurtenances, and of 55 Messuages, 18 Cottages, two Corn Mills, one Dove-house, 70 Orchards, 400 Acres of Land, 100 Acres of Meadow, 600 Acres of Pasture, 400 Acres of Underwood, 500 Acres of Furze and Heath, and a Rent of 60s. with the Appurtenances in Maiden Bradley, Horningham and Baytcliff. And unless, &c.*

Somersetshire ff. *Command the same Persons, that they Justly, and without Delay, perform to the same Persons the Covenant made between them, of 800 Acres of Land, 20 Acres of Pasture, and 20 Acres of Furze and Heath, with the Appurtenances in Maiden Bradley, Horningham, Baytcliff, and Yarnefield. And unless, &c.*

And the Agreement is such, (that is to say) that the said Edward and Ann, Edward and Margaret, and Elizabeth, have acknowledg'd the said Honours, Castles, Manors, Parks, Tenements, Rents, Common of Pasture, View of Frankpledge, Escheats, Goods and Chattles of Waifs, Estrays; Goods and Chat-

Common
Pleas.

Chattles of Felons, Fugitives, Outlaws, Attaints, Murtherers of themselves, Deodands, Treasure, Fairs, Markets, Wreck of the Sea, Warren, Fishery, the Moiety and Parts with the Appurtenances, and the said Advowson, to be the Right of the said Robert, as those which the said Robert and George, have of the Gift of the said Edward and Ann, Edward and Margaret, and Elizabeth; and they have remised and for ever quit-claim'd the same, from them the said Edward and Ann, Edward and Margaret, and Elizabeth, and their Heirs, to the said Robert and George, and their Heirs. And moreover, the said Sir Edward Seymour, and Ann, have granted for themselves and the Heirs of the said Edward, that they will warrant to the said Robert and George, and to the Heirs of the said Robert, the said Honours, Castles, Manors, Parks, Tenements, Rents, Common of Pasture, View of Frankpledge, Estcheats, Goods and Chattles of Waifs, Estrays; Goods and Chattles of Felons, Fugitives, Outlaws, Attaints, Murtherers of themselves, Deodands, Treasure, Fairs, Markets, Wreck of the Sea, Warren, Fishery, the Moiety and Parts, with the Appurtenances, and the said Advowson, against them the said Edward and Ann, and the Heirs of the said Edward for ever. And further, the said Sir Edward Seymour, Knight, and Margaret, have granted for themselves, and the Heirs of the said Edward, that they will warrant to the said Robert and George, and the Heirs of the said

said Robert, the said Honours, &c. (here again Common reciting the Parcels) against them the said Ed- Pleas. ward and Margaret, and the Heirs of the said Edward: And furthermore, the said Elizabeth hath granted for herself and her Heirs, that they will warrant to the said Robert and George, and the Heirs of the said Robert, the said Honours, &c. (here again reciting the Parcels) against her the said Elizabeth, and her Heirs for ever. And for this, &c.

Taken and acknowledge'd, &c. (as above.)

Of a Manor, Grange, divers Messuages, Cottages, several Quantities of Land, Meadow, Pasture, Furze and Heath, from Five Cognizors, the Four last being two Husbands and their Wives, with Warranty by the first Cognizor against Him and his Heirs, and against the other Four Cognizors and the Heirs of the Father of the two First Cognizors, and against all Persons claiming by them or any of them. 2. A Warranty against the Second and Third Cognizors and the Heirs of the Husband, and all the other Persons named in the First Warrant. 3. A Warranty against the Two last Cognizors and the Heirs of the Husband only.

Nottin.

Common
Pleas.

Nottingham ss. Command Jervace Cresley, Gent. John Cresley, Gent. and Mary his Wife, and Robert Bingham, Gent. and Elizabeth his Wife, that they Justly and without Delay, perform to Robert Clifton, Esq; the Covenant made between them, of the Manor of G. with the Appurtenances, and of the Grange of G. with the Appurtenances; also of seven Messuages, four Cottages, two hundred Acres of Land, twenty Acres of Meadow, twenty Acres of Pasture, and one hundred of Furze and Heath, in G. otherwise G. and otherwise G. S. H. N. and B. And unless, &c.

And the Agreement is such, (that is to say) that they the said Jervace, John and Mary, and Robert Bingham and Elizabeth, have acknowledg'd the said Manor, Grange and Tenements, with the Appurtenances, to be the Right of the said Robert Clifton, as those which the said Robert hath of the Gift of the said Jervace, John and Mary, and Robert Bingham and Elizabeth; and those they have remised and quit-claim'd, from them and their Heirs, to the said Robert Clifton and his Heirs, for ever. And moreover, the said Jervace hath granted, for himself and his Heirs, that they will warrant to the said Robert Clifton and his Heirs, the said Manor, Grange and Tenements, with the Appurtenances, against the said Jervace and his Heirs, and against the said John and Mary,
and

and Robert Bingham and Elizabeth, and Common Pleas.
 their Heirs; and against the Heirs of Parke
 Cresley, Gent. Deceased, late Father of the
 said Jervace and John, and against all other
 Persons claiming by the said Jervace, John and
 Mary, Robert Bingham and Elizabeth, and
 Park, or any of them, for ever. And fur-
 ther, the said John and Mary, have granted
 for themselves and the Heirs of the said John,
 that they will warrant to the said Robert
 Clifton and his Heirs, the said Manor,
 Grange and Tenements, with the Appurtenan-
 ces, against the said John and Mary, and
 the Heirs of the said John, and against
 the said Jervace, John and Mary, Robert
 Bingham and Elizabeth, and their Heirs;
 and against the Heirs of the said Park; and
 against all other Persons claiming by the said
 John and Mary, Jervace, Robert Bingham
 and Elizabeth, and Park, or any of them,
 for ever. And also, they the said Robert Bing-
 ham and Elizabeth, have granted for them-
 selves and the Heirs of the said Robert, that
 they will warrant to the said Robert Clifton
 and his Heirs, the said Manor, Grange and
 Tenements, with the Appurtenances, against
 the said Robert Bingham and Elizabeth, and
 the Heirs of the said Robert for ever. And
 for this, &c.

Taken and acknowledged by the above-
 said John Cresley, on the 23d. Day of
 April, in the sixth Year of his present
 Majesty's Reign. Before us,

Timothy Trueman,
 Peter Goodynough.

Taken

Common
Pleas.

*Taken and acknowleg'd by the
above-said Jervace Cresley, Ro-
bert Bingham, and Elizabeth his
Wife, on the 25th. Day of April,
in the sixth Year aforesaid. Be-
fore us,*

Timothy Trueman,
Peter Goodyenough.

*Taken and acknowledg'd by the
above named Mary Cresley, the
said John Cresley's Wife, on the
26th. Day of April, in the sixth
Year aforesaid. Before us,*

Timothy Trueman.
Peter Goodyenough.

**A Præcipe and Concord where one Cognizor
warrants one Part, another warrants
another Part, and a Third another Part.**

Middlesex ff. Command A. B. Gentleman,
and C. his Wife, D. E. Gentleman and
F. his Wife, and G. H. Gentleman
and J. his Wife, that they Justly, &c.
perform to J. M. Esquire, the Cove-
nant made between them, of three
Messuages, three Barns, three Gar-
dens, one Orchard, fifty Acres of
Land, ten Acres of Meadow, thirty
Acres of Pasture, and ten Acres of
Wood Land, with the Appurtenances,
in N. P. and S. And unless, &c.

And

Common
Pleas.

And the Agreement is such, (that is to say) that the said A. and C. D. and F. G. and J. have acknowledg'd the said Tenements, with the Appurtenances, to be the Right of the said J. as those which the said J. hath of the Gift of the said A. and C. D. and T. G. and J. and those they have remised and quitclaim'd, from them the said A. and C. D. and T. G. and J. to the said J. and his Heirs for ever. And moreover, they the said A. and C. have granted for themselves, and the Heirs of the said A. that they will warrant one Messuage, one Barn, and one Garden, part of the said Tenements, in N. aforesaid, to the said J. and his Heirs, against the said A. and C. and the Heirs of the said A. for ever. And also, the said D. and T. have granted for themselves, and the Heirs of the said D. that they will warrant another Messuage, one Barn, one Garden, and the Orchard aforesaid, and the said fifty Acres of Land, ten Acres of Meadow, thirty Acres of Pasture, and ten Acres of Wood-Land, part of the said Tenements, in P. aforesaid, to the said J. and his Heirs, against the said D. and T. and the Heirs of the said D. for ever. And further, they the said G. and J. have granted, for themselves and the Heirs of the said G.

O

that

Common Pleas. that they will warrant one Messuage, one Barn, and one Garden, residue of the said Tenements, in S.^a afore said, to the said J. and his Heirs, against the said G. and J. and the Heirs of the said G. for ever. And for this, &c.

Of Recoveries.

IN Treating of Recoveries, I shall consider them under the following Particulars,

First, What is a Recovery, and to what Intent it is suffer'd.

Secondly, Of the Parties thereto.

Thirdly, Of what Things a Title of Entry will lie, and of what not.

Fourthly, Of the Manner in which the Parcels are to be placed.

Fifthly, Of the Forms of the several Sorts of Recoveries.

Sixthly, Of their Operation and Effect.

First,

Common
Pleas.

First, What is a Recovery, and to what
Intent it is suffer'd.

A *Recovery* consider'd abstractedly is, a Term made of use to signify the Act of the Court in giving Judgment for the Party, who after litigating a Matter in Law is entitled thereto; and when the Court have pronounced their Judgment for the Party to Recover, then *eo instanti* of such Judgment, the Party in whose Favour the Court have given such Judgment, may be said to have obtained a *Recovery*; and it is much the same in its Signification with a *Decree* in the Court of *Equity*. What it is.

And this *Recovery* when consider'd, as to the Use that is now made of it, is a *Common Assurance*, framed by the Wisdom and Policy of the Law, whereby, tho' there be a Judgment of the Court, yet it is not in an adversary Manner, but by the Consent and Permission of the Parties; By Consent
of Parties. which is the Reason we generally say, that a *Recovery* is to be suffer'd. But tho' this Judgment be fictitious as to any actual Litigation upon which it is given, yet it is given upon a *real Writ* brought, and is a Judgment according to the strict Rules of the *Common Law*, and is made use of to

To cut off cut off a Restraint, (which in a common
an Estate Acceptance is term'd an *Estate Tail*) that
Tail.

is so put upon a Man, that without this
Recovery he could not alienate his Lands,
nor mortgage the same, tho' the utmost
Exigencies and Emergencies of himself and
Family required it.

Inconve-
niencies of
Estates
Tail.

There were several Inconveniencies
of which were the Grounds and Foundation
of this Method of Conveyance, but they
are so accurately treated of in other Books,
and a little Sketch of 'em mention'd in
Brown, of Fines; that to avoid the Impu-
tation of a piratical Repetition, I decline
saying more on that Head.

Only I think it necessary to shew, how
it may be said that this *Recovery* is found-
ed upon the strict Rules and Principles
of Law, and that will be most properly
understood under these following general
Heads.

Secondly, Of the Parties thereto.

And they are, 1. *The Demandant*.
2. *The Tenant*. 3. *The Vouchee or Vouchess*.

1. *The Demandant* is Plaintiff in the
Writ of Entry, who is supposed to bring
this real Action against the *Tenant* of the
Free-

Freehold of the Lands to be convey'd by *The Dem-*
 this Assurance: In which Action he declares *mandant.*
 and demands the Lands, by his Writ and
 Count, wherein he alledges, that the *Ten-*
nant, of whom he demands them, has no
 Right thereto; but after a *Disseisin*, which
 one *Hugh Hunt*, a fictitious *Disseisor*, had
 made upon the *Demandant* within the Time
 limited for the *Demandant* to bring the
 Action, *viz.* within thirty Years, &c.

2. The *Tenant*, is the Person against *The Tenant*
 whom the Writ of Entry is brought, and 'tis
 necessary that he be *Tenant* of the Free-
 hold; and therefore if the *Tenant* in Tail be
 not in possession, there must be a Fine Feof-
 ment, Bargain and Sale *Indrold*, or a Lease
 made to some other Person, whereby
 such Person may become *Tenant* in Possession of the Freehold, which by these *How to be*
 Instruments he is so made in Construction *so made.*
 of Law: And when the Recovery is suf-
 fer'd, the *Demandant* recovers against the
Tenant, the Land demanded; and the *Ten-*
nant recovers over in Value against the
Vouchee of his Land, to make such *Tenant*
 Recompence for his Loss.

But if the Writ of Entry be brought *Writ of*
 against the *Tenant* in Tail in Possession, *Entry*
 and a Stranger who has nothing in the *against Te-*
 Land, yet the Recovery shall be esteem'd *nant in*
Tail.
 O 3 good,

Common good, and the Recompence in Value shall
 Pleas. be supposed to go to him that lost his
 Land, (*to wit*) to the Tenant in Tail.
1 Ven. 1. 358. Anonymus.

Tenant for Life, and Him in Remainder, Tenant to the Præcipe. Yet if a Tenant for Life, and He in Remainder in Tail, suffer a common Recovery by being made Tenant to the *Præcipe*, this shall not bind the Issue in Tail; for tho' He in Remainder is join'd with the Tenant for Life, as Tenant to the *Præcipe*; yet Tenant for Life is the true Tenant to the *Præcipe*, and the Land is recover'd against him only; and the Recompence (which is supposed to be given) cannot vest in Him in Remainder, because the Land is in Truth recover'd against Tenant for Life. *Leach. v. Cole cited in 3 Co. f. 6. b.*

Lessee for Life, and him in Remainder, Tenant to the Præcipe. If there be a Lessee for Life, and the Remainder is to B. in Tail, and a *Præcipe* is brought against Him in Remainder in Tail; if he has a Surrender from the Lessee for Life at any time before the Recovery completed, 'tis a good Recovery, and the *Præcipe* is made good. *Noy 126.*

Him in Reversion. If a *Bargain and Sale* be executed to Lessee for Years in Reversion, in order to make him Tenant to the *Præcipe*; this will not destroy his Term. *2 Rolls Rep. 249. 1 Mod. 107.*

If

If a *Bargain and Sale* of Lands be *Bargain* made to *A.* and his Heirs; *A.* hath an Estate before his Entry, sufficient to be made a Tenant to the *Præcipe*.

When Tenant for Life is not made *Tenant for* Tenant to the *Præcipe*, nor hath surrender'd *Life.* his Term; a common Recovery cannot be suffer'd to bar the Entail. *1 Ventris*

360.

Where a Tenant to the *Præcipe* is made by a Fine, and the Recovery is suffer'd, *Tenant by* and afterwards the Fine is reversed upon a *Fine.* Writ of Error; yet the Recovery is good.

2 Salk. 568. Lloyd v. Evelin.

If a Tenant to the *Præcipe* gains the Freehold at any time before the Judgment *At what* is supposed to be given on the Recovery, *Time to* the Recovery will be good. *2 Salk. 568. have the*

Lacy v. Williams.

A Lease and Release to make a Tenant to the *Præcipe*, is said to be good, without any Consideration. *1 Mod. 262. Bar-* *Considera-*
ker v. Keat. *tion.*

The Conveyance of a Fine levied on *Ostabis Purificationis beate Mariæ*, is sufficient to make a Tenant to the *Præcipe*, for a Recovery suffer'd the same Day; and the Law will suppose a *Privity* the same Day *Privity* to support the Conveyance. *Fettiplaces supposed.*
Case.

Common
Pleas.

3. Of the *Vouchee*.

Vouchee.

When the Tenant appears and defends his Right, he then calls, or rather vouches to warranty, *i. e.* calls before the Court the Person from whom he claims the Lands, and who had warranted to him a just Right and Title thereto; and having so done, this puts the *Demandant* in a Condition to know, who to demand his Land of; and therefore the Tenant having vouched such a Person to Warranty, that Person is by his Warranty a sufficient Person for the *Demandant* to demand the Lands of, and is call'd the *Vouchee*.

And if it be with a single *Voucher*, *i. e.* when the Tenant to the *Præcipe* vouches the *Common Vouchee*, so called, because he is a Person appointed for this Purpose, who is common to all Persons for their Use on such Occasions. He being call'd to Warranty, is supposed to make a faint Defence, by tendering an Issue, that this *Hugh Hunt*, named in the *Demandant's* Count, did never disseise the *Demandant* in the manner he had set forth; and upon this, the *Demandant* prays a Day, which is suppos'd to be given to him, to make out the Truth of the Matter contain'd in his

his Court: And when he comes back ^{Common} again to the Court, and is prepared so ^{Pleas.} to do; the common Vouchee never appears, but makes default, and departs in despite of the Court, which in real Actions is peremptory, and entitles the *Demandant* to final Judgment; and this Judgment is for the *Demandant* to recover the Land against the Tenant to the *Præcipe*; and he is by the same Judgment, to recover over against the *Vouchée* of his Land, to the Value of the Land which the Tenant to the *Præcipe* has lost by the Recovery; and if there be more Vouchees, they are to recover one against another, in the same manner: And the last real Vouchee is supposed to recover Lands to the Value, against the nominal *Vouchee*; and thereupon a Writ of *Seisin* is awarded, to put the *Demandant*, who has so recover'd the Land, into possession thereof.

See more of the Effect of a Recovery, with single, double, and treble Vouchees, hereafter.

Note; Such Persons and by such Names may be Demandants, Tenants and Vouchees, in Recoveries, as may be Cognizors and Cognizees in Fines. *Co. Lit.* 372.

O,

Thirdly.

The ATTORNEY'S

Thirdly, Of what Things a Writ of Entry will lie, and of what not.

Of an Acre of Land.

Of an Acre of Land covered with Water.

12 H. 7. 1. 4.

Of a Water Pit. 10 E. 3.

14 Ed. 3. 842. T. N. B. fol. 191.

Of a Passage over the Water.

Of a Bailiwick. T. N. B.

191. 34 E. 3. 423.

A Prasipe quod reddat (which are the mandatory Words of the Writ of Entry) lieth

Of an Office. 27 H. 8. 12.

Of an Advowson of a Church, or of the fourth part of the Tythes. 34 E. 3.

Of a Portion or part of Tythes. Dyer fo. 84. Pl. 83.

Of a certain pancel of Land. Dyer 84. Pl. 83.

Of the Wardship of Land, and of the Heir, or of the Wardship of Land only.

Reg. 161. 22 E. 3. f. 29.

Of all manner of Ecclesiastical or Spiritual Profits,

fits, as of a Vicarage, Portions, Common Pleas.
Pensions, Tythes, &c. Stat. 32

H. 8. c. 7.

Of all and all manner of great, mixt, and small Tithes within the Vill or Hamlet of B. in the Parish of A. howsoever growing, happening, and yearly renewing within the Vill or Hamlet of B. in the Parish of A. Thel. Lib. 8. Cap. 9. sect. 2.

Of the fourth part of Tythes and Oblations of the Church of St. Peter, &c. 16 Ed. 3.

A Writ of Entry lieth

Of a certain Portion of Tythes or Land, not shewing how much. 1 H. 4. f. 1. Dyer fo. 84. Pl. 83, 84, 85, & 86.

In antient Times of a Hide Land or Plow Land. 4 Ed. 3. 161.

Of an Ox-Land. 6 E. 3. 291.

Of six Foss of Land in length and four in breadth. 14 Aff. 13.

Of a Toft or Scite of a Mill. 14 E. 3.

Of the Hundrd of B. and Bailiwick of C. 34 Ed. 1. 3 Ed. 3.

Of a feeding for six Sheep. 3 E. 3. 23. 4 Ed. 2.

Of a Rood of Land. 3 Ed. 5.

Of an Advowson. 34 Ed. 1.

Of

The ATTORNEYS

- Of a Moiety of a Rod of Land.
41 Ed. 3.
- A Writ Of a Shop. Reg. f. 3.
- of Entry Of four Acres of Elderwood.
lieth 11 Aff. 13.
- And it is said that it lieth in a
Town, but not in a Hamlet.
- Of a Ditch, nor of a Pool, nor of
a Fisbery. 8 E. 3. 381.
- Of an Advowson of Tythes, of a
Wain of Land. Reg. f. 29.
- Of a Common of Pasture. 27 H.
8 f. 12.
- Of Estovers. 2 E. 3.
- Of Homage and Fealty, nor of
Services to be done. 6 E. 2.
- It is said that a Writ of
Entry lieth not Of an Oxland of Marsh Ground.
13 E. 3. f. 3.
- Of a Selon or Ridge of Land for
the Incertainty; because a Se-
lon, which is a quantity of
Land, sometimes containing an
Acre, sometimes more, and
sometimes less.
- Of a Garden, Cottage or Crofts.
14 Aff. 13. 8 H. 8. 3. 22 E.
4 13.
- Of a Rod of Land. 13 E. 3.

Of a Quarry; a Mine or Market, Common
 13 E. 3. for they are not in Pleas.
 Demesne, but in Profit only.
 A Writ Of an upper Chamber. 3 H. 6. f. 1.
 of Entry Of an Annuity or of a Tenement,
 lieth not but it must be of Houses and a
 certain quantity of Acres. Moor.
 953.

But this must be understood that it lies
 not of these singly and alone, for the com-
 mon Practise shews us, that it will lie of many
 of these things, join'd with others that are
 more worthy, and to which they may be
 Incident.

Fourthly, The manner in which the
 Parcels are to be placed.

Things more worthy are to be placed
 before things that are less so, as a Castle
 before a Manor, a Manor before a Messu-
 age, a Messuage before a Tost or Mill.

Things general before particular, as
 Land, which is the Genus, before Meadow
 or Pasture, which are the Species.

Entire or whole Things before Parts, as
 a Messuage before a moiety of a Messuage,
 an Advowson before a moiety of an Advow-
 son, &c.

And

Common
Pleas.

And here see an Example of placing
the Parcels.

A. B. Demands against C. D. the Ma-
nors of E. and F. with the Appurte-
nances, and two Messuages, one Shop,
one Toft, one Mill, one Dovehouse, two
Gardens, twenty Acres of Land, ten Acres
of Meadow, five Acres of Pasture, six
Acres of Wood, one hundred Acres of
Furze and Heath, one hundred Acres of
Moor, ten Acres of Marsh, ten Acres of
Elder Wood, ten Acres of Rusby Ground, five
Acres of Land covered with Water, a Rent
of twenty Pounds two Shilling and two Pence,
and a Rent of a pair of Gold Spurs, ten Ca-
pons, two Cocks, two Hens, five Pounds of
Pepper, Common of Pasture for all manner of
Cattle, View of Frankpledge, a Free Warren,
a Free Fishery, a Liberty of Foldage, and
also Fairs and Markets, Toll, Stallage and
Picage, Goods and Chattles of Felons, Fugi-
tives, Outlaws, and of Persons put in Exi-
gent, Deodands, Chattles of Waifs and E-
strays, with the Appurtenances in B. A. J. N.
and R. Also the Rectories of B. and S.
with the Appurtenances; and all and all
manner of Tythes belonging and appertaining
thereto;

thereto; and also the Advowson of the Common
Churches of N. and B. and the Advowson of the Vicarage of H. and in which, &c.

Divers other Particulars are to be put
in the Writ, as may be seen in the Regi-
ster, fol. 1, 2. *West Symb. 2. p. 77.* And
this is said to be the manner in which they
are to be placed.

The Honour of A. with the Appurtenances. See more of
The Castle of B. with the Appurtenances. the Parcels
The Burrough of C. with the Appurtenances. at the End.
The Forest of F. with the Appurtenances.
The Chase of G. with the Appurtenances.
The Hundred of D. with the Appurtenances.
The Manor of E. with the Appurtenances.
The Scite of the Manor of H. with the Appur.
The Scite of the late Monastery of I. with the
Appurtenances.
A Messuage.
A Shop.
A Cellar.
A Toft.
A Mill.
A Dove-house.
A Garden.
Land.
Meadow.
Pasture.
Wood.

Common
Pleas.

Wood.

Furze and Heath.

Moor.

Ground wherein Rushes grow, or Rushy Ground.

Marsh Land.

Elder Wood.

Land covered with Water.

A Rent of Ten Shillings.

A Rent of two Capons, two Hens, and one Pound of Pepper.

Common of Pasture for all manner of Cattle.

A Free Fishery.

A Free Warren.

Liberty of Foldage.

A Salt Pit.

A Bullary of Salt Water.

A Passage over the River T.

A Wharf, a Quay.

A Fair and Market with the Appurtenances.

View of Frankpledge, with the Appurtenances.

Chattles of Felons, Outlaws, and Persons put in Exigent, Chattles of Waifs, Estrays and Deodands.

The Rectory of B. with the Appurtenances, and all and all manner of Tythes whatsoever, belonging and appertaining to the said Rectory.

The Advowson of the Church of B.

The Advowson of the Vicarage of the Ch. of C.

The Moiety of a Messuage.

Fifthly,

Fifthly, Of the forms of several Recob-
beries, and the method of passing the
same.

You are to prepare your *Præcipe* taken
and drawn properly from the Deeds, as to
the Parcels, and Ingross it in this Form.

If the *Tenant* appears in Person and it be
with single Vouchee, it is thus,

Middlesex ss. Command A. B. that he
justly, &c. render to
The Tenant personally C. D. one Messuage,
Voucheth to Warranty and ten Acres of
Jacob Morland. Land, with the Ap-
purtenances in E.
which he claims, &c.

If it be with double or treble Voucher
you only vary it according to the num-
ber of Vouchees; thus,

Middlesex ss. Command A. B. that he
justly, &c. render to
The Tenant personally C. D. one Messuage,
Voucheth to Warranty and ten Acres of
T. G. Gentleman who Land, with the Ap-
being also present purtenances in E.
Voucheth over Jacob which he claims, &c.
Morland.

If

The ATTORNEY'S

If the *Tenant* appear in Person, and the *Vouchee* or *Vouchees* by Attorney, then your *Precipe* is thus,

Devonshire ff. Command A. B. that he
The *Tenant* personally justly, &c. render to
Voucheth to Warranty C. D. one Messuage,
G. H. (whereupon the and ten Acres of
Summons is returnable Land, with the Ap-
on the Morrow of the purtenances, in E.
Holy Trinity) who by which he claimeth,
Attorney Voucheth o- &c.
ver Jacob Morland.

If neither the *Tenant* or *Vouchee* appears
in Person, but by Attorney, then the
Precipe is thus,

Suffolk ff. Command A. B. that he
The *Tenant* by Attorney justly, &c. render to
Voucheth to Warranty C. D. one Messuage,
John Selacre and Plyable and ten Acres of
his Wife (whereupon the Land, with the Ap-
Summons is returnable on purtenances, in E.
the Morrow of the Holy which he claimeth,
Trinity) who also by their &c.
Attorney vouch over Ja-
cob Morland.

What Per- It is usual to make such Person a *Tenant*
sons made to the *Precipe* that will be able to go to
Tenants. the Bar of the Common Pleas to vouch to
War-

Warranty: But a Person may be made a Tenant to the *Precipe* who is not able to go thither for that purpose; and in that Case you must sue forth a *Dedimus potestatem*, which is a Commission resembling that before mentioned, for taking the acknowledgment of a *Fine*, viz. upon a supposition that the *Tenant* or *Vouchee* is so feeble as not to be able to Travel to *Westminster*, for that purpose.

Common Pleas.

When by *Dedimus*.

And this *Dedimus* impowers the Commissioners therein named, to take the acknowledgment of a *Warrant of Attorney*, which the Tenant executes, to empower two Attornies or one of them, to appear for him at the Return of the Writ of Entry.

If the *Vouchee* or *Vouchees* live distant from *Westminster*, and cannot come thither to suffer the *Recovery* and vouch to *Warranty*; then you may sue out a *Dedimus potestatem* for that purpose.

The Instructions to the Curfitor of the proper County, who makes out this Writ of *Dedimus potestatem*, for such Writ is the *Precipe*, underwriting the Names of the Commissioners to whom you would have the Writ directed, and you pay for the same 1. 5 s. 8 d. Having gotten your Writ, you

Instructions for a *Dedimus*.

*What to be
done with
the Dedi-
mus.*

you send it down in the Country under Seal, (i. e. inclosed in the Wax) and then appoint a Day for two of your Commissioners to go to the Party, and take the acknowledgment of the Warrants of Attorney;

Which are in this Form.

*The Prae-
cipe.*

Yorkshire ff. Command Alexander Sellacre, that he justly, &c. render to Timothy Wealthy, Gent. twenty Messuages, with the Appurtenances in Scarborough, which he claims, &c.

*Warrant
of Attor-
ney for the
Tenant.*

Yorkshire ff. Alexander Sellacre appoints in his stead William Probity and Abraham Fairbill, against Timothy Wealthy, Gentleman, to gain or lose, in a Plea of Land.

Taken and acknowledg'd on Monday the seventh Day of August, in the fifth Year of the Reign of his present Majesty, George the Second, King of Great Britain, &c. Before, &c.

N. B. A Warrant of Attorney for the Vouchee differs but in this Instance, viz.

York. ff. John Selacre and Plyable his Wife whom Alexander Selacre voucheth to Warranty appoints, &c. as above.

The Commissioners having taken the acknowledgment of the Warrants of Attorney,

ney, you annex the *Warrant of Attorney* to the *Dedimus*, and indorse on the back of the *Dedimus* the following Return.

What to be done with the Warrant of Attorney.

The Execution of this Writ (or Commission) appears in a certain Schedule hereto annex'd.

Return.

If your *Recovery* be suffer'd by the *Tenant in Person*, you carry your *Pracipe* above-mention'd, for that purpose, to a *Serjeant's Clerk*, and the *Tenant* being there present, the *Count* in the *Recovery*, the *Voucher to Warranty*, and the *Prayer of an Imparlance*, are repeated by some of the *Serjeants at the Bar*.

How pass'd at the Bar.

Your *Pracipe* being thus pass'd at the *Bar*, you give it to one of the *Cryers*, and he carries it in to the *Secondary*, to that *Prothonatary* in whose Office you intend your *Proceedings* shall be enter'd; and the *Secondary* enters the *Pracipe* in a Book for that purpose, and you pay him 4 s. 6 d. and 'tis usual to give the *Cryer* 6 d. for his trouble in getting your *Pracipe* enter'd; and the *Secondary* marks the same thus,

Pracipe to be enter'd with the Secondary.

At the Bar.

You pay the *Serjeant's Clerk* to whom you had given the *Pracipe*, 6 s. if it be with a single *Vouchee*; 8 s. with a double *Vouchee*; 10 s. with

The Fees.

Common
Pleas.

with a *treble Voucher*, and Twelve Shillings with a *quadruple Voucher*: And if it be by *Warrant of Attorney*, you pay him 4 s. more, and 2 s. more to the Secondary.

When your *Pracipe* is thus pass'd at the Bar, you leave a Copy thereof with the *Curfitor*, for a Writ of Entry, which he makes you out in this Form.

The Form of a Writ of Entry is as follows.

You pay the
Curfitor
for this
Writ, 7 s.
6 d. and
for length,
according
to the num-
ber of the
Parcels.

GEORGE the Second, by the Grace of
God, of Great Britain, France and Ireland,
King, Defender of the Faith, &c. To the
Sheriff of Middlesex, Greeting. Command
C. D. that Justly and without Delay, he
render to A. B. four Messuages, (here recit-
ting the Parcels) with the Appurtenances,
in E. which he claims to be his Right and In-
heritance; and into which the said C. hath
not an Entry; but after a Disseisin which
Hugh Hunt, thereof unjustly and without
Judgment hath made to the said C. D. within
thirty Years now last past, as he saith: And
whereupon he complains, that the said C. D.
deforced him; and unless he shall so do, and
the said A. B. shall give you Security that his
Suit shall be prosecuted; then summon by good
Summoners, the said C. D. that he be before our
Justices at Westminster, in three Weeks
from

from the Day of St. Michael, to shew, where-
fore he will not; And leave you there the Sum-
mons and this Writ. : Witness Our Self at
Westminster, the Twenty-eighth of June, in
the sixth Year of Our Reign.

Which Writ of Entry when seal'd, you
carry to the Alienation Office, and get it
compounded by the Commissioners, who
sit there for that purpose; in Term Time,
from Nine to Ten in the Morning, and
for one Week after every Term: And
when they have compounded, or rated at
what Value the Lands are per Annum; you
pay the Composition Money to the receiver
of the King's Fees, who in Term Time
and for a Week after, likewise sits there
to receive the same: And having so done,
you leave it at the Office to be enter'd,
and for the Commissioners to indorse their
Names thereon.

See before
the Method
of passing
Writs of
passing
Writs of
Covenant
in the Va-
cation.

Passing the
Writ of
Entry at
the Alie-
nation Of-
fice.

You pay at the Alienation Office if in
Term 1s. 6d. to the Clerk of the Office,
and 6d. to the Receiver; and if out of Term
while the Commissioners sit at the Office,
2s. and after that time 2s. 6d. to the Clerk
of the Office, and 6d. to the Receiver.

The Fees.

Having pass'd your Writ of Entry at
the said Alienation Office, you carry it to
the Return Office, which is now executed
by

The ATTORNEY'SCommon
Pleas.

by Mr. Henry Barnes at Mr. Prothonotary Borrett's Office ; and he returns the same in this Form.

Pledges of Prosecution are,
John Doe, Richard Roe.

The Re-
turn.

The Summoners, John Denn,
Richard Fenn.

And you pay for this Return, and the proper Entry made in the Book kept for that purpose, one Shilling and Sixpence.

When the Writ is thus returned, you must get the Attorney General's Hand hereto, for which you pay 10 s. and then make out your Writ of *Seisin*, in this Form.

The Form of a Writ of *Seisin*.

GEORGE the Second, &c. *To the Sheriff of Middlesex, Greeting. Know you that A. B. in our Court, before our Justices at Westminster, hath recovered his Seisin against C. D. of four Messuages, &c. (naming the Parcels) with the Appurtenances in B. by our Writ of Entry upon a Disseisin in Le post: Therefore we command you, that without delay, you cause the said A. to have compleat Seisin of the said Tenements,*
with

with the Appurtenances; and do you forth-
with make appear to our Justices at West-
minster, in what manner you shall execute
this Procept; And have you there this Writ.
Witness, &c.

Common
Pleas.

The Return of the Writ of Seizin is in
this manner.

By Virtue of this Writ, to me directed,
on the tenth Day of February, in the within
written Year, I caused full Seisin of the Tene-
ments within specified, with the Appurtenan-
ces, to be delivered to the within named A. B.
as I am within commanded.

This You return your self. R. S. Esquire,
Sheriff.

If your Vouchee appears not in Person
but by *Dedimus*, then you must make out
your Summons, which is supposed to pre-
ceed the suing of the *Dedimus*, and the
Dedimus is supposed to issue to authorize
such Persons as are therein named to take
the Acknowledgment by the Vouchee or
Vouchees, of his or their Warrant of At-
torney, there having been a Writ of Sum-
mons to vouch the said Persons call'd the
Vouchees, to Warranty: But the Method

P

now

Comm
Pleas.

now made use of, is, not to sue out a Writ of Summons first, but make it out after your *Præpe* is pass'd at Bar, to warrant and make compleat the whole Proceedings.

The Form of a Writ of *Summons*.

GEORGE the Second, &c. To the Sheriff of Middlesex, Greeting. Summon by good Summoners, J. S. that he be before our Justices at Westminster, on the Octave of St. Martin, to warrant to C. D. four Messuages, &c. (here reciting the Parcels) with the Appurtenances, in E. which S. B. in our Court, before our Justices at Westminster, claims as his Right against the said C. D. by our Writ of Entry upon a Disseisin in le post: And whereupon the said C. D. in our same Court, hath vouched the said J. S. to be summoned in your County, to warrant against the said S. B. And have you there the Summoners, and this Writ. Witness Robert Eyre, at Westminster, the Twenty-third Day of October, in the sixth Year of our Reign.

Note; There were formerly Nine Returns between the Return of the Writ of Entry and Return of the Writ of Summons, and

and so betwixt one Writ of *Summons* and another: But by the Statute 17 Car. 2. c. 6. they are abridged to five Returns inclusive. As for Example; If the Writ of *Entry* be returnable *Tres Mich.* then the Writ of *Summons* must be returnable *Octab. Martin.* If the Writ of *Entry* be *Mens. Mich.* then the *Summons* must be *Quinde- cem Martin;* If the Writ of *Entry* be *Cra- stin. Animar.* then the *Summons* must be *Octab. Hill.* accounting the Return of the Writ of *Entry* for one; and then the fifth Return is the Return of the *Summons*; and so it must be, betwixt one *Summons* and another.

How the
Summons
to be Tested
and Re-
turnable.

The first Writ of *Summons* must bear Teste on the appearance Day of the Return of the Writ of *Entry*, and so a second *Summons* from the appearance Day of the Return of the First.

The Form of a Writ of *Summons* for the Second Vouchee.

GEORGE the Second, &c. (as before to the Words) *to warrant to J. S. (whom C. D. heretofore, in our Court, before our Justices at Westminster, hath vouched to Warranty) four Messuages, (naming the Parcels) with the Appurtenances, in E. which A. B. in our*

Common
Pleas.

Court, before our Justices at Westminster, claims as his Right, by our Writ of Entry upon a Disseisin in le post; and whereupon the said J. S. in our said Court, hath vouched over the said A. B. (second Vouchee) to be summoned, &c. ut supra.

I think proper in this Place to give a definition of the meaning of calling this Writ of Entry a Writ of Entry in le post; and it must be known, that it is in Contra-distinction to three others, which are in the Quibus, Per and Cui.

Entry in
the Qui-
bus.

A Writ of Entry in the Quibus, is a Writ of Entry in the nature of an Affize, against the Tenant who made the Disseizin to the Demandant himself.

Per Cui
and Post.

A Writ of Entry in the Per Cui and Post, is thus to be understood.

In the Per,

A Writ of Entry in the Per, is when he against whom it is brought, claims immediately under the first Party, i. e. as Heir to him, or by his Alienation; and 'tis called in the Per only from its running in this Form, Command A. that he render to B. a Messuage, of which A. hath disseized B. unjustly, and without a Judgment, and wherein the said A. hath not Entry, but BY C. who demised to him; So that there, the

The Form.

Words

POCKET COMPANION.

317

Words BY THE DISSEISIN, Constitute Common
that Term of Art of calling it a Writ in the Per. Pleas.

And in the Per and Cui 'tis thus; *In Per and which the said A. hath no Entry but BY Cui.*

C. TO WHOM T. demised it, who unjustly, &c. made the Disseizin; So that the Words, BY C. TO WHOM T. demised, Constitute this Term of Art, in calling it a Writ of Entry in the Per and Cui.

Now a Writ of Entry on a DISSEISIN IN LE POST, runs thus, *Wherein In the Post the said A. hath no Entry, but AFTER A DISSEISIN which D. unjustly made to the said B.* So that the Tenant here claims not BY C. who demised it to him, nor BY C. TO WHOM D. demised it to him; but is supposed to come in *after a Disseizin* made by D. And these Words, AFTER THE DISSEISIN, Constitute that Term of Art, of calling it a Writ of Entry upon a Disseizin in le post.

The Entry of a Recovery with a Single Voucher.

Wiltshire ss. Timothy Plenty, Esquire;
in his proper Person, demandeth against
Charles Sellacre, Gentleman, three Messuages,
seven Gardens, seventy Acres of Land, nine

Common
Pleas.

Acres of Meadow, fifteen Acres of Pasture, twenty Acres of Furze and Heath, and Common of Pasture for all manner of Cattle, and Common of Turbary, with the Appurtenances in S. as his Right and Inheritance; and into which the said C. hath no Entry; but after

The Count. *a Disseisin which Hugh Hunt, thereof, unjustly, and without Judgment, hath made to the aforesaid C. within thirty Years, &c. And whereupon he declares, that he was seised of the said Tenements and Commons, with the Appurtenances, in his Demesne, as of a Fee and Right, in time of Peace, in the time of our Lord the King, that now is; by taking the Profits thereof to the Value, &c. and into which, &c. and thereof he bringeth his Suit, &c.*

The Tenant *And the said C. in his proper Person vouches the cometh and defendeth his Right when, &c.*

Common *and thereupon voucheth Jacob Morland to*

Vouches. *Warranty, who is present here in Court in his proper Person, and freely warranteth to him the said Tenements and Commons, with the Appurtenances, &c. And hereupon the said J. demandeth against the said Jacob,*

Count a- *Tenant; by his Warranty, the said Tene-*

gainst him. *ments and Commons, with the Appurtenances, in the manner aforesaid, &c. And whereupon he saith, that he was seised of the said Te-*

Tenements and Commons, with the Appurtenances, in his Demesne, as of Fee and Right in time of Peace, in the time of our Lord the King, that now is; by taking the Profits thereof to the Value, &c. and into which, &c. and thereof he bringeth Suit, &c. And the said Jacob, Tenant; by his own Warranty defendeth his Right, when, &c. and saith, that the said Hugh did not disseise the said Timothy of the said Tenements and Commons, with the Appurtenances, as the said Timothy by his said Writ and Declaration doth above suppose. And thereof he putteth himself upon the Country, &c.

And the said Timothy thereupon craveth leave to imparle, and he hath it, &c. And afterwards the said Timothy cometh again, here unto Court this same Term, in his proper Person; and the said Jacob, altho solemnly called, cometh not again; but departed in Contempt of the Court, and maketh default; therefore it is adjudg'd, that the said Timothy Do recover his Seisin against the said Charles, of the said Tenements and Commons, with the Appurtenances; and that the said Charles have of the Land of the said Jacob to the Value, &c. and the said Jacob in Mercy, &c. and thereupon the said Jacob prays a Writ of our Lord the King, to be directed to the Sheriff of the County

Common Pleas.

Plea of the Common Voucher.

Imparlance.

Departure in Despite of the Court.

Award of *the Writ of* *Seisin.* *of* *the* *Writ of* *Seisin.* *to cause full Seisin of the said Te-*
tenements and Commons, with the Appurte-
nances, to be deliver'd to him, and it is

Return
whereof.

granted to him; returnable here in three
Weeks, from the Day of the Holy Trinity,
&c. At which Day the said Timothy
cometh here into Court, in his proper Per-
son, and the Sheriff (namely J. S. Esquire)
now returneth, that he by Virtue of the said
Writ to him directed, on the Eighth Day
of June, last past, caused full Seisin of the
said Tenements and Commons, with the Ap-
purtenances, to be deliver'd to the said Ti-
mothy, as by the said Writ he was com-
manded, &c.

This Precedent herein before inserted,
 is according to the best Form made use
 by the Practisers of the Court of Common
 Pleas, since the Proceedings have been in
 English; but with all due Respect I sub-
 mit the following Form to their better
 Judgment, with my Reasons for varying
 it from theirs above.

Wiltshire ss. Timothy Plenty, Esquire,
 The Count. personally demandeth against Charles Sell-
 acre, three Messuages, seven Gardens,
 seventy Acres of Land, nine Acres of Mea-
 dow,

dow, fifteen Acres of Pasture, twenty Acres of Furze and Heath, and Common of Pasture for all manner of Cattle, and Common of Turbary, with the Appurtenances, in S. as his Right and Inheritance, and into which the said Hugh hath not any Entry; but after a Disseisin which Hugh Hunt thereon, unjustly and without any Judgment, made to the said Timothy within thirty Years, &c. And whereupon he declares, that he was seised of the said Tenements and Commons, with the Appurtenances, in his Demesne, as of a Fee and Right, in time of Peace, in the Reign of our Sovereign Lord the King, that now is; by taking the Profits thereof to the Value, &c. and wherein, &c. And thereof he bringeth his Suit, &c.

And the said Charles personally cometh and defendeth his Right, when, &c. and thereupon Voucheth to Warranty Joseph Tenant Vendorland, who is personally present here Voucheth in Court; and freely warranteth the said T. V. Tenements and Commons, with the Appurtenances, to him, &c. And hereupon the said Timothy demandeth against the said Joseph, Tenant; by his Warranty, the said Tenements and Commons, with the Appurtenances, in the manner aforesaid, &c. And

Count a-
gainst him.

whereupon he declares, that he was seised of the said Tenements and Commons, with the Appurtenances, in his Demesne, as of a Fee and Right, in time of Peace, in the time of Our Sovereign Lord the King, that now is; by taking the Profits thereof to the Value, &c. and wherein, &c. And thereof he bringeth his Suit, &c.

The Vou-
chee, vou-
ches over
the Com-
mon Vou-
chee.

And the said Joseph, Tenant; by his Warranty, personally cometh and defendeth his Right, when, &c. And thereupon, further voucheth to Warranty Jacob Morland, who is personally present here in Court; and freely warranteth the said Tenements, with the Appurtenances, &c. And hereupon the said Timothy demandeth against the said Jacob, Tenant; by his Warranty, the said Tenements and Commons, with the Appurtenances, in the manner aforesaid, &c. And whereupon he declareth, that he was seised of the said Tenements and Commons, with the Appurtenances, in his Demesne, as of a Fee and Right, in time of Peace, in the Reign of our Sovereign Lord the King, that now is; by taking the Profits thereof, to the Value, &c. and wherein, &c. And thereof he bringeth his Suit, &c.

Count a-
gainst him.

Plea of the
Common
Vouchee.

And the said Jacob, Tenant; by his Warranty, defendeth his Right, when, &c. and pleadeth, that the said Hugh did not dis-

disseise the said Timothy of the said Tenements with the Appurtenances, as the said Timothy doth by his said Oath and Declaration above suppose; and of this he putteth himself upon the Country, &c. Common Pleas.

And the said Timothy thereupon craveth leave to imparle, and he bath it, &c. And Impar. afterwards, in this very Term, the said lance. Timothy personally cometh again here into Court; and the said Jacob, tho' solemnly Departure summon'd, cometh not, but departed in con- in despite tempt of the Court, and maketh Default; of the Court. Wherefore it is adjdg'd, That the said Timothy do recover his Seisin of the said Judgment-Tenements and Commons, with the Appurtenances, against the said Charles; and that the said Charles do have of the Land of the said Joseph, to the Value, &c. and that the said Joseph do have over of the Land of the said Jacob, to the Value, &c. And be the said Jacob amerced, &c. And hereupon the said Timothy prays a Writ of Our Sovereign Lord the King, to be directed to the Sheriff of the said County, to cause full Award of Seisin of the said Tenements and Commons, the Writ of Seisin. with the Appurtenances, to be deliver'd to him; and the same is granted to him, returnable here forthwith. Afterwards, (that is to say) on the seventh Day of May, this very Term, the said Timothy personally, comes

Common
Pleas.

The Re-
turn of the
Writ.

comes here into this Court; and the Sheriff namely Richard Fisher, Esquire, now returneth, that he by Virtue of the said Writ, to him directed, did on the fifth Day of the same Month of May, Cause full Seisin of the said Tenements and Commons, with the Appurtenances, to be deliver'd to the said Timothy, as by the said Writ he was commanded, &c.

And here I think it will not be amiss, to assign my Reasons for varying this Entry from that before mention'd.

Personally
demand-
eth.

As to the Words, *personally demandeth*, I apprehend that the Word *Proprie* when added to *Persona*, signifies, in the Place where it is here made use of, no more, than that the *Demandant* comes personally into Court, in Contradistinction to his coming in any other Manner, as, by *Attorney*, &c. and if it is to be literally translated, it would with greater propriety be construed, that he came in his own Person; for *Proper*, signifies, as I apprehend, if added to a Person, a part of Time, a Place, or a Thing; that such a Person is a fit Person to go to such a Place, or to do somewhat such a Day; or such a Place is a proper Time or Place, to transact such an Af-

fair;

fair; or if it be applicable to a Thing to be done or thought of, then with great propriety of Speech it may be said, that *such a Thing is very proper to be done or thought of, that the Person for whom such a Thing is to be done, may meet with Success*: But to translate *propria persona* into the Words, *proper Person*, I submit to better Judgment, whether it be not a very improper Translation, and if it signifies only the Identical Presence of the Persons coming into Court, to distinguish it from his coming into Court in any other manner: I believe it will be granted me, that the adverbial Translation of his coming *personally* into Court, is as significant and more accurate, than to say, that he comes in his own Person, or proper Person.

Common
Pleas.

I have here translated, *non habet Ingressum*, into the Words, *hath not an Entry*; because, I conceive it's better English to say, *that a Man hath not any Money*, than to say, *he hath none*; for *having not* in that Case, signifies, his not being possess'd of somewhat as his own, and a Man can't be possess'd of nothing; tho' he may not be possess'd of any thing.

*Non habet
Ingressum*

Next, as to the Word *declareth*, *Dico* *Declarare* may be justly translated either to *declareth*, *Dico* or to *plead*, as the purpose of his Speaking is

Common
Pleas.

is to serve his Turn, and as the Word, *Dicit*, is in the Plaintiff's Count, it may, I apprehend, with great propriety be said, that the *Demandant declareth or declares*, than to say rudely, *that he saith*.

*In Domi-
nico suo ut
de Feodo et
Jure.*

In Dominico suo ut de Feodo, is here translated, *in his demesne as of a Fee*; and the particle *a* is necessarily understood in the Latin Expression, and when converted into the Idiom of our Language it ought to be express'd.

In Quæ, I think is as plain and more easy, when translated into the Word, *wherein*, than to say, *into which*.

*Tempore
Domini
Regis.*

Tempore Domini Regis, I apprehend, signifies, *the Reign of his present Majesty*, and not merely, *the Time that passes away during his Continuance of his being our Sovereign*; and if it is to be precisely translated, the Word, *Our*, is as unwarrantably added as my Words, *Our Sovereign*; for literally, to be sure it is, *in the time of the Lord the King*; but I apprehend that is very bald, when compared with the usual Mode of Speech now bestow'd on that Occasion; and it can't be denied, but that I am as much warranted to say, *Our Sovereign Lord the King*, as to translate *Tempore Domini Regis* into the Words, *In the Time of the Lord the King*;

King; since no *Latin* for the Word *Our*, ^{Common} appears there. ^{Pleas.}

Producit Seſtam, &c. is here tranſlated, *Producit he bringeth his Suit*, &c. inſtead of, *he Seſtam bringeth Suit*; for if you will look into *Nova Narrationes*, 153. a Book highly commended by my Lord Cook, in his Preface to the ſixth Report, you may plainly ſee, from whence we took the Words, *Et inde producit Seſtam*, &c. When the Proceedings of the Law were in *French*, which they were, before they were in *Latin*, the Conclusion of the Count was, *Et il ent ad Suit et dareign bone*, that is, *And thereof he hath a good Suit*, that is, *a good Action and good Proof*: So in the ſame Book, in a *Quod ei deſorciat*, the Conclusion is, *il ent ad Suite bon*. And in a Count upon a Writ of *Quo Fure*, the Conclusion is, *Et que tiel ſoit ſon droit il ent ad Suit et dareign bon*, which ſignifies, that the Demandant having ſhewn what Right he hath to the Place in Queſtion, he concludes, *And that ſuch is his Right, he has thereupon brought his Suit*, which Suit, is the Action or the Manner of bringing the Matter in Queſtion to a Tryal, the Right to which is called the Action, and that he hath good Proof of what he had before alledged.

When

Common
Pleas.

When the Proceedings came into *Latin*, originally the Conclusion of a Count was, *Et tendatur Secta et disfrationatio bona*, which is, *And a Suit and good Proof is tender'd or offer'd*; and in some Places, while the Proceedings were in *French*, the Words in the Conclusion were, *Et il tendra Suit et dareign bon*. Novæ Narrationes, 423. and that seems to be the Foundation of *tendatur Secta*; and sometimes they did at that Time make it, *Et inde producit Sectam*, &c. as may be seen in the same Book, Title, *Articuli ob novas narrationes*, fol. 423. So that from all which, it may be said with Certainty, that the meaning of the Words, *Et inde producit Sectam*, &c. is, that thereupon the Plaintiff brings a Suit, (or his Suit and good Proof) the particle *a* is necessarily implied, and the Word *his*, is as necessarily understood; so that the Reader may make use of the particle *a* or the pronoun *his*, which he thinks most proper; but *bringerh Suit*, is *unde*, and seems to me not a good way of Expression.

*Vocat ad
Warranti-
zandum.*

I have translated *vocat ad Warranti-
zandum*, voucheth to Warranty, because, *Voucheth*, is a Term of Art in the Law, and signifies more than barely the Word *Oalleth*, for it signifies that the Tenant assures, or avows to the Court, that he hath
a Per-

a Person ready, who is bound to warrant the Tenements, and *Vouches* such Person so to do; and *Britton cap. 75.* calls it *ad vocatio ad Warrantizandum*, whereby it is plain, that *Voucher* signifies more than bear calling to warrant, and I think there's no Word more proper than the Word *Voucheth*, as it is a Term of Art sufficiently understood, and is *ad equale* to the Person who is thereby made a Party to the Suit, who is call'd the *Vouchee*.

Common
Pleas.

The Reason for translating the Words, *in misericordia, &c.* and *be the said Jacob amerced*, is herein before assigned, in the Title of *Judgments*, and need not be herein again set forth.

*In miseri-
cordia, &c.*

I need not mention the Reason of varying from the Form first above-mention'd, in some other Particulars, because, the Words so varied, are, I apprehend, sufficiently declarative of their own Propriety.

Here I conceive it proper, to give a Description of the several *&c.* in this Entry.

As to the first *&c.* Within thirty Years, *&c.* no more is understood thereby, but within thirty Years last past, which is the limited Time of bringing the Action, *Infra tri-
ginta an-
nos, &c.*

To

*Ad valen-
tiam, &c.*

To the Value, &c. By that &c. it understood, to the Value of so much, as the Places amounted to.

*Et in qua,
&c.*

And wherein, &c. is understood, the Words that are contained in the Writ, viz. *wherin the said C. hath no Entry, but after a Disseisin made upon him by Hugh Hunt, as above.*

*Quando,
&c.*

By the Words, when, &c. in the Plea of the Tenant, is meant, *when, and in what manner the Court will consider thereof,*

By the &c. made use of, after the Words, *Et gratis tenementa predict' cum pertin' ei Warrantizat* is understood, *contra omnes homines Imperpetuum.*

By the &c. after the Words, *in forma predicta* is understood, that the Demandant demands the Lands of the Vouchee, in the same manner as he had before demanded them of the Tenant, viz. *as his Right and Inheritance, and wherein, &c.*

*Point se su-
per patria-
ny, &c.*

By the &c. in the Plea of the Common Vouchee, *Jacob Morland*, is understood, that he submits the Matter of the Plea to be try'd by the Country, and prays the Demandant may join Issue with him therein, by submitting the Matter likewise to be try'd by a Jury; but before the Demandant joins Issue, it may be observed, the Demandant prays leave to imparle; and then

then follows the Words,

And he hath it, &c. by which *&c.* there *Et habet,* is understood no more, than he hath it *&c.*

granted by the Court according to his Prayer; and then it is to be observed, that the *Demandant* comes at the Day, but the *Common Vouchee* comes not, which is called a *Departure in despite of the Court.*

The *&c.* after the Words, *ad Valentiam*, in the Judgment, signifies, to the Value of the Lands above recover'd by the *Demandant* against the *Tenant*, and the same by the *Tenant* against the *Vouchee*, and by him against the *Vouchee*; and if the *Tenant* or *Vouchee* do not appear when they are called, as it is in a *Departure in despite of the Court*, therefore *Seisin* of the Lands shall be awarded.

And *Note*, in *Recoveries* suffer'd in the Court of *Grand Sessions* of *Chester*, are enter'd upon the Default of the *Common Vouchee*, in this Manner. After the *Common Vouchee* hath appeared and pleaded, then the *Demandant* imparles generally the same *Sessions*, without any certain Day, by the Words, *petit licentiam inde inter loquendi & habet, &c.* and then comes into Court again, and the *Vouchee* being called, makes Default, which is there, a *Departure in despite of the Court*, being in the same *Sessions*.

*Recoveries
in the
Grand Sessions.*

Common
Pleas.

Sessions, and the *Vouchee* having no Day given him by the Court, nor imparling to any Day certain; but being always intended to be present; therefore Judgment is enter'd without a *petit Cape*; for if the Imparlance had been to another Term, then it would have been no Departure, tho' he had not appeared; but a *Petit Cape* must have been first awarded. *Vide Fel. 211. 3 H. 6. 14. 38 Ed. 3. 13. 18 Ed. 4. 41. 14 H. 8. 2. 2 Cro. 292.*

*Ad capi-
end. inde
Espletias
ad Valen-
tiam, &c.*

Note, The meaning of the *Esplees* taken to the Value, &c. signifies, that the produce of the Ground or Land, (as the Hay of the Meadows, or the Herbage of the Pasture) Corn from the arable Land, the Rents and Services, &c. which are term'd the *Esplees* have been taken and receiv'd by the *Demandant* or his Ancestors more strongly; to denote, that he or his Ancestors were actually seized of the Place, in dispute Terms of the Law. 310.

And no Writ of *Entry in le post* lay at Common Law, but it is given by the Statute of *Marlb. Ch. 29.* which Writ of *Entry in le post*, lay by the said Statute when he against whom the Action is brought, came into the Estate, neither in the *Per*, immediately by such a Person, nor mediately by such a Person, to whom another gave

gave him a Title; but when he is either out of every of the Degrees, as by *Abatement, Disseisin, Escheat, Recovery, Election, Succession, Dower, Judgment, &c.* or as the third or more remote Alliance; and then the Writ shall say, *Whereupon he complains, that A. the Tenant, unjustly deformed him;* but these Words are never in any Writ of *Per and Qui.* *Finch's Law, 91. b.*

Devonshire ff.

Command E. T. Gentleman, and G. H. Gentleman, that they Justly and without Delay, render to A. B. Esquire, and C. D. Gentleman, the Manor of D. with the Appurtenances, and two Mesfuages, two hundred Acres of Land, one hundred Acres of Meadow, one hundred and fifty Acres of Pasture, ten Acres of Underwood, Common of Pasture, a Free Fishery, a Knight's Fee, Wards, Marriages, Escheats, Reliefs, a Court Leet, and View

The Tenant in his own Person calls S. T. the Summons L. P. O. whereupon, is returnable on the Morrow of the Holy Trinity, and thereupon the said S. puts in his stead H. G. and A. R. jointly and severally, against the said A. and C. of the said Plea,

The ATTORNEY'S

View of Frankpledge, with the Appurtenances in D. otherwise Little D. Great T. otherwise T. the Greater, S. and T. also the Rectory of D. otherwise Little D. with the Appurtenances; and also, all and all manner of Tythes, Oblations, and Obventions whatsoever, yearly arising, growing and renewing, in little D. and the Advowson of the Vicarage of the Church of Little D. which they claim, &c.

*The Ancient Method
of passing
Recoveries.*

The usual Method heretofore, was to enter this *Præcipe* on a *Remembrance* of the same Term, that the *Summons* was returnable, which appears above, to be of *Trinity Term*; and then this *Remembrance* used to be carried to a *Serjeant* at the Bar, who Counted against the *Tenant*; and another *Serjeant* appear'd for the *Tenant*, and pray'd a *Summons* against the *Vouchee*, and this was all that was done in that Term, otherwise than the Attorney for the *Demandant* made an Entry upon the Roll of the *Demand*, *Count*, *Voucher*; and of the Award of the *Summons*, in this manner.

Devon-

Common
Pleas.

Devonshire ss. A. B. Gentleman, and C. D. Gentleman, personally demand against E. F. Gentleman, and G. H. Esquire, (naming the Parcels as before in the Præcipe to the Words) with the Appurtenances, which they claim as their Right and Inheritance, and wherein they the said E. F. and G. H. have no Entry; but after a Disseisin which Hugh Hunt, unjustly and without a Judgment, made thereof, to the said E. F. and G. H. within thirty Years, &c. And whereupon they declare, they were seised of the said Manor, Tenements, Common, Free Fishery, Knight's Fee, Wards, Marriages, Escheats, Reliefs of Court, Court Leet, View of Frankpledge, Rectory, Tythes, Oblations, and Obventions, with the Appurtenances, in their Demesne, as of a Fee and Right; and of the said Advowson, as of a Fee and Right, in time of Peace, in the Reign of our Sovereign Lord the King, the Esplees being taken thereof, to the Value, &c. and in which, &c. and thereof he brings his Suit, &c. And the said E. F. and G. H. personally come and de-

The Entry
of the Sum-
mons.

*The War-
rants of
Attorney.*

defend their Right, when, &c. and
call thereto to Warrantie S. T. sum-
mon'd in the said County, and that
they may have him here on the Mor-
row of the Holy Trinity, by the
Aid of this Court, &c. The same Day
is here given to the said Parties, &c.
And thereupon the said E. F. and G.
H. put in their stead H. G. and A.
R. jointly and severally against the
said A. B. and C. D. of the said
Plea, &c.

*The present
Method of
passing Re-
coveries.*

But now it must be understood, that
the antient Method of passing Recoveries,
as to that Particular, is much shorten'd,
and made more easy to the Practisers, and
less expensive to the Parties; For, instead
of carrying the Remembrance to the Court,
and the Parties appearing there, and the
Serjeant's praying a *Summons* for the *Vou-
chee*, the Method now is, when you have
got your *Warrants of Attorney* taken, ac-
knowledg'd and return'd, if they were ta-
ken by *Dedimus*, then you bring the *De-
dimus* with the *Warrants of Attorney*, or
the *Mittimus* and *Transcript*, together with
the *Præcipe* ready engross'd on Paper, and
deliver them to a Serjeant's Clerk, or if he
is not there ready, you may deliver it to
the

Common
Pleas.

the Serjeant, whose Clerk you intend shall have the benefit of passing it at the Bar, and he passes it in the manner before described; which, when done, you give it the Cryer, and he delivers it to the Secondary of that Prothonotary, in whose Office you intend to enter the Proceedings; and the Secondary marks the same, with the Words, *At the Bar*; and then the Cryer gives it you back again; and then you draw your Entry of the Proceedings on the Roll of that Term; But still you must enter the Award of the Summons, if your Recovery be suffer'd of the same Term, that is, if the Writs of *Entry* and *Summons* are of the same Term, you enter the *Mittimus* and *Transcript* in the following manner; but if your Writ of *Summons* is returnable of another Term, then your Writ of *Entry*, and the Award of the *Summons* must be upon a Roll of the Term that your Writ of *Entry* is returnable, and your Writ of *Summons* must be of another Term; as for the Purpose, If your Recovery be suffer'd in *Hillary Term*, as there can't be five Returns between the Return of the Writ of *Entry* and the Return of the *Summons*; because *Hillary Term* hath but four Returns; therefore your Award of your *Summons* must be upon a Roll of

Of award-
ing the
Summons.

Q

Mi-

Common
Pleas.

Michaelmas Term, and the Entry of the Mittimus and Transcript with the Recovery, on a Roll of Hilary Term.

The Form of the Entry of the Mittimus and Transcript is thus.

*The Inci-
pitur of the
Mittimus
and Tran-
script.*

Our Lord the King, hath sent here to his Justices of the Bench, his Writ of Mittimus, closed (together with the Tenor of his said Majesty's certain Writ of *Dedimus potestatem* for receiving a Warrant of Attorney, and the Return thereof, and also the Warrant of Attorney taken thereon,) in these Words, *George the Second, by the Grace of God King of Great Britain, France and Ireland, Defender of the Faith, &c. To his Justices of the Bench, Greeting. The Tenors, &c.* (so recite the Mittimus and Transcript *Verbatim*, in Small Hand.)

Then in your Exemplifying Hand enter your Recovery, which I have made a Recovery with double Voucher, in the following manner.

*Alias pro-
ut Patet.*

Heterofore, (It is thus contained in the 144th Roll) as it appears, (or appeareth) of the Term of the Holy Trinity, last past.

De-

Devonshire ff. A. B. Gentleman, and C. D. Gentleman, in their own Persons demand against E. F. Gentleman, and G. H. *The Count.* Gentleman, the Manor of D. with the Appurtenances, and two Messuages, &c. (here naming the rest of the Parcels as before) with the Appurtenances in D. otherwise Little D. Great T. otherwise T. the Greater, S. and P. also the Rectory of D. otherwise Little D. with the Appurtenances; also, all manner of Tythes, Oblations and Obventions whatsoever, yearly arising, growing and increasing, in Little D. and the Advowson of the Vicarage of the Church of Little D. which they claim as their Right and Inheritance, and wherein they the said E. F. and G. H. have not an Entry; but after a Disseisin, which Hugh Hunt, unjustly and without a Judgment, made thereof, to the said E. F. and G. H. within thirty Years, &c. And whereupon they declare, they were seized of the said Manor, Tenements, Common, Free Fishery, Knight's Fee, Wards, Marriages, Escheats, Reliefs of Court, Court Leet, View of Frankpledge, and Rectory, with the Appurtenances, and of the said Tythes, Oblations and Obventions, in their Demesne, as of a Fee and Right, and also of the said Advowson, as of a Fee and Right, in the time of Peace,

Common
Pleas.

in the Reign of Our Sovereign Lord the present King, by taking the Esplees thereof, to the Value, &c. and wherein, &c. And thereof they bring their Suit, &c.

Summons.

Warrants
of Attor-
ney.

And the said E. F. and G. H. in their own Persons come and defend their Right, when, &c. and thereupon vouch to Warranty, S. T. let them have him here on the Morrow of the Holy Trinity, summon'd in the said County, by the Assistance of the Court, &c. the same Day is here given to the said Parties, &c. and hereupon the said E. F. and G. H. put in their stead H. G. and A. R. their Attornies, jointly and severally, against the said A. B. and C. D. of the said Plea, (or in the said Action) &c. And now at this Day, (namely) on the Morrow of the Holy Trinity, as well the said A. B. as C. D. come here in their own Persons, (or personally come here) as the said E. F. and G. H. by the said H. G. their Attorney, and the said S. T. being summon'd, &c. comes likewise by G. W. his Attorney, and freely warrants to them the said Manor, Tenements, Common, Free Fishery, Knight's Fee, Wards, Marriages, Escheats, Reliefs of Court, Courts Leet, View of Frankpledge, and Rectory, with the Appurtenances, and the said Tythes, Oblations, Obventions, and Advowson, &c. And hereupon the said
A. B.

A.B. and C.D. demands against the said S. T. Common Pleas.
 Tenant, by his Warrant, the said Manor, Tenements, Commons, Free Fishery, Knight's Fee, Wards, Marriages, Escheats, Reliefs of Court, Court Leet, View of Frankpledge, and Rectory, with the Appurtenances, and the said Tythes, Oblations Obventions, and Advowson, in the manner aforesaid, &c. And whereupon they declare, that they were seised of the said Manor, Tenements, Commons, Free Fishery, Knight's Fee, Wards, Marriages, Escheats, Reliefs of Court, Court Leet, View of Frankpledge, and Rectory, with the Appurtenances, and of the said Tythes, Oblations and Obventions, in their Demesne, as of a Fee and Right, and also of the said Advowson, as of a Fee and Right, in time of Peace, in the Reign of Our Sovereign Lord the present King, by taking the Esplees thereof, to the Value, &c. and in which, &c. And thereof they bring their Suit, &c.

And the said S. T. Tenant, by his Warrant, defends his Right, when, &c. and thereupon vouches over to Warrant Jacob Morland, who is personally present here in Court, and freely warrants to him the said Manor, Tenements, Commons, Free Fishery, Knight's Fee, Wards, Marriages, Escheats, Reliefs of Court, Court Leet, View of Frankpledge, and Rectory, with the Appurt. and the said Tythes, Oblations, Obventions, and Advowson, &c. 2 Voucher.

Common
Pleas.

And hereupon the said A. B. and C. D. demand against the said Jacob, Tenant, by his Warranty, the said Manor, Tenements, Commons, Free Fishery, Knight's Fee, Wards, Marriages, Escheats, Reliefs of Court, Court Leet, View of Frankpledge, Rectory, with the Appurtenances, and the said Tythes, Oblations, Obventions, and Advowson in the manner aforesaid, &c. And whereupon they declare, that they were seised of the said Manor, Tenements, Commons, Free Fishery, Knight's Fee, Wards, Marriages, Escheats, Reliefs of Court, Court Leet, View of Frankpledge, and Rectory, with the Appurtenances, and of the Tythes, Oblations and Obventions, in their Demesne, as of a Fee, and also of the said Advowson, as of a Fee and Right, in the time of Peace, in the time of Our Sovereign Lord, the present King, by taking the Esplees thereof, to the Value, &c. and wherein, &c. And therent they bring their Suit, &c.

Plea.

And the said Jacob, Tenant, by his Warranty, defends his Right, when, &c. and pleads that the said Hugh did not disseise the said A. B. and C. D. of the said Manor, Tenements, Commons, Free Fishery, Knight's Fee, Wards, Marriages, Escheats, Reliefs of Court, Court Leet, View of Frankpledge, and Rectory, with the Appurtenances, and of the said Tythes, Oblations Obventions, and

and Advowson, as the said A. and C. above ^{Common} suppose, by their said Writ and Declaration: and thereof he puts himself upon the ^{Pleas.} Country, &c.

And the said A. and C. pray leave to imparle thereto, and they have it, &c. And afterwards, the said A. and C. personally ^{Impar-} come again into this Court, this very Term; ^{lance.} and the said Jacob, altho' solemnly required comes not again, but departs in Contempt of the Court, and makes Default; Therefore it is adjudg'd, that the said A. and C. recover their Seisin against the said E. F. and G. H. of the said Manor, Tenements, Commons, Free Fishery, Knight's Fee, Wards, Marriages, Escheats, Reliefs of Court, Court Leet, View of Frankpledge, and Rectory, with the Appurtenances, and of the said Tythes, Oblations Obventions, and Advowson; and that the said E. F. and G. H. have of the Land of the said S. T. to the Value, &c. And further, that the said S. T. have of the Land of the said Jacob, to the Value, &c. and the said Jacob in mercy, &c. And hereupon the said A. B. and C. D. pray his Majesty's Writ to be directed to the Sheriff of the said County, to cause full Seisin of the said Manor, Tenements, Commons, Free Fishery, Knight's Fee, Wards, Marriages, Escheats, Relief of Court, Court Leet, View of Frankpledge, and

Common
Pleas.

and Rectory, with the Appurtenances, and of the said Tythes, Oblations, Obventions, and Advowson, and it is granted to them returnable here in Three Weeks from the Day of the Holy Trinity, &c. At which Day, the said A. and C. personally come here into this Court, in their proper Persons; and the Sheriff, (namely) J. S. Esquire, now returns, that by Virtue of the said Writ, to him directed, on the Eighth Day of June, last past, he caused to be delivered to the said A. and C. full Seisin of the said Manor, Tenements, Commons, Free Fishery, Knight's Fee, Wards, Marriages, Escheats, Relief of Court, Court Leet, View of Frankpledge, and Rectory, with the Appurtenances, and of the said Tythes, Oblations, Obventions, and Advowson, as he was commanded, by the said Writ, &c.

But where the Recovery is by a treble Voucher, it varies from the former only in this respect, That instead of S. T. the first Voucher, calling the Common Voucher to Warranty, he calls the other Voucher, in this manner.

And the said S. T. Tenant, by his Warranty, defends his Right, when, &c. And thereupon, further vouches to Warranty, H. W. Gentleman, let him have him here

here in Three Weeks from the Day of Saint Michael, summoned in the said County, by the Assistance of the Court; the same Day is given here, as well to the said Demandant, as to the said first Vouchee, Tenant by his Warranty, &c. At which Day come personally here, as well the said A. and C. as the said S. by his said Attorney, and the said H.W. being summon'd, &c. comes likewise by J. S. his Attorney, and freely warrants the said Manor, Tenements, Commons, (here reciting the Parcels) and proceeding as in the former, only when you come to that part which constitute the Judgment; after having said, as above, that the said E. F. and G. H. may have of the Land of the said S. to the Value, &c. instead of going on, And that the said S. may have of the Land of the said Jacob, to the Value, &c. You say, And that the said S. do further have of the Land of the said H. to the Value, &c. and that the said H. do further have of the Land of the said Jacob, to the Value, &c. and the said Jacob in Mercy, &c. and then, as in the former; And hereupon the said A. and C. pray, &c.

So this Direction will guide the Reader with respect to a *Quadruple Voucher*, without a useless Repetition.

Common
Pleas.

The Roll being enter'd in this manner, and your Writs returned, as before mentioned, and the Attorney General's Hand endorsed upon the Writ of Entry, you exemplify the Recovery in the following manner, on a Skin of Parchment, with a 10 s. Stamp thereon.

The Form of your Exemplification is thus.

George the Second, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith, &c. To all, to whom these our present Letters shall come, Greeting! Know ye, that among the Pleas of Land, inrol'd at Westminster, before Sir Robert Eyre, Knt. and his Brethren, our Justices of the Bench, of the Term of Saint Hillary, in the sixth Year of our Reign, in the thirty-sixth Roll, it is thus contained; Heretofore, as it appears, in the seventy-first Roll of the Term of Saint Michael, last past, it is thus contained. Devonshire. A. B. and C. D. personally demand against E. F. and G. H. the Manor, &c. (going on herai with the Entry you had made upon the Roll, and after the Words, As he was commanded by the said Writ.) You conclude your Exemplification thus. All and Singular, which Premisses, at the Request of the said

POCKET COMPANION.

387

Said A. and C. by the Tenor of these Presents, we have commanded to be exemplified. In Testimony whereof, we have caused our Seal, appointed for Sealing of Writs in the said Bench, to be affixed to these Presents. Witness Robert Eyre, at Westminster, on the twelfth Day of February, in the sixth Year of our Reign.

Common
Pleas

This Exemplification you examine with the Prothonotary, together with the Roll, Writ of Entry, Summons and Seisin, the Remembrance and Docquer, in this manner: And having so done, you pay the Prothonotary 1 l. 5 s. for the Entry of the Recovery, and filing the Writs, and signing the Exemplification, if the Recovery be a double Voucher by Warrant of Attorney; and if a double Voucher in Person, then you pay him only 13 s.

I apprehend it would be deemed superfluous to insert the Form of a double, treble, and quadruple Voucher, by repeating the Entry again at length, when the Alteration may be easily described in the manner following.

When it is by double Voucher, the Tenant, instead of calling to Warranty the Common Vouchee, calls to Warranty that Person which is vouched before the Common Vouchee, in this manner. And

THE ATTORNEY'S

And the said C. in his own Person comes and defends his Right, when, &c. and thereupon vouches to Warranty, J. H. Esq; who is present here in Court, in his own Person, and freely warrants the said Tenements and Commons, with the Appurtenances, to him, &c. And hereupon the said A. demands against him the said J. H. Tenant, by his Warranty, the said Tenements and Commons, with the Appurtenances, in manner aforesaid, &c. and whereupon he declares, that he himself was seised of the said Tenements and Commons, with the Appurtenances, in his Demesne, as of a Fee and Right, in time of Peace, in the Reign of his present Majesty, by taking the Esplees thereof, to the Value, &c. and into which, &c. And thereof he brings his Suit, &c.

And the said J. S. Tenant, by his Warranty, defends his Right, when, &c. and further, thereupon vouches to Warranty Jacob Morland, who is likewise present here in Court, in his own Person, and freely warrants the said Tenements and Commons, with the Appurtenances, to him, &c. And hereupon the said A. demands against him the said Jacob, (so on, as in the former.)

And treble and quadruple Vouchers differ no otherwise from the first, than by adding them in the manner herein before described.

F I N I S.



THE

TABLE

Abatement.

WHAT a Plea in Abatement is. Page 65

That Pleas in Abatement are not favour'd, and why, 68

Where the Court abated a Writ *ex Officio* 64

What is a Dilatory Plea. *ibid.*
Vide *Respondeas Ouster*.

That Pleas in Abatement are not to be received after a general Impar lance but in some, and what Cases, and for what Reasons. *ibid.*

The safest Way to plead in Abatement. 66

The Manner of pleading in Abatement to a *Scire Facias*. *ib.*

Where an Affidavit is required to a Plea in Abatement, and where not. 70

When you cannot plead in Abatement. 68

What is ill pleading in Abatement. 66, 71, 72.

The Conclusion of a Plea in Abatement. 71

Abatement by Death, where aided. 70

Where Advantage cannot be taken of a bad Declaration in Abatement. *ib.*

What is a good Plea in Abatement to an Action of Debt upon a Judgment. 71

What cannot be pleaded by Bail in Abatement, nor what cannot be pleaded by one Partner. *ib.*

A Plea of Privilege by an Attorney of the Common Pleas to an Action brought in the King's Bench. 73

Outlawry in the Plaintiffs pleaded in Abatement. 74

Misprision of Commorancy 75

The Statute of Additions pleaded. 76

Of

The TABLE.

Of Misnomer of the Defendant in his Surname. 76	The Form of a <i>Superfedeas</i> for an Attorney. 178
— In his Christian Name. 77	The Form of a Writ of Privilege for an Attorney of the Common Pleas, sued in the Mayor's Court of the City of London. 179
The Life of the Testator pleaded by an Executor, at the Time of the Plaintiff's Original. 78	The Method of Proceeding against an Attorney. 181
Infancy. <i>ib.</i>	The Distinction between the Conclusion of a Bill against an Attorney, and of a Declaration. <i>ib.</i>
Affidavit.	The Manner of forejudging an Attorney. 183
Where an Affidavit is required to hold to Bail, who is to administer the Oath, to be fil'd <i>Gratis.</i> 31	The Form of the Entry of a Forejudger. <i>ib.</i>
Arrest of Judgment.	The Form of restoring an Attorney forejudged. 184
Vide Judgment.	The Consequence of a Forejudger. <i>ib.</i>
Assizes.	The Manner of restoring him. <i>ibid.</i>
How and where Assizes were antiently to be held. 98	Why an Attachment against an Attorney is to answer to the King, and not the Party. 187
By what Statute appointed to be as they now are. <i>ib.</i>	How the Rule for an Attachment is granted. <i>ibid.</i>
Attachment. Vide Attor-	The Consequence of an Attachment against an Attorney. 186
nies.	Of Bails.
Attorney.	Bail, how to be put in. 21
Of Proceedings by and against Attornies. 176, 181	The Form of the Entry. 22
The Form of a Declaration for an Attorney. 177	How to be put in on a <i>Testatum</i>
The Form of an Attachment for an Attorney. 176	Writ, and with whom. 16
The Form of an Attachment against an Attorney. 186	The
The Form of a <i>Certiorari</i> for an Attorney. 177	



The TABLE

The Form of the Entry of a Recognizance of Bail. 22

The Form of the Condition of the Recognizance. 21

A Recital of the Act of 12th of the late King, that the Defendant is not to be held to Bail in Causes under ten Pounds, nor in an Inferiour Court under forty Shillings. 23

That an Affidavit is to be indorsed on the Back of any Writ, for any Sum for ten Pounds or upwards, in order to hold the Defendant to Bail. 31

A Rule of the Sixth of King George the Second, that no Attorney is to be Bail. 29

Another of the same Term, that tho' the Bail taken by the Sheriff be put in above, they may be excepted against. *ib*

Third and Fourth of King George the Second, that Special Bail is to be perfected within four Days. *ib*

Another Rule of the same Term, that Bail put in on Writs of Error, are to be perfected in four Days, otherwise a *Non pros*. 30

What not proper for them to plead. 71

General Bars.

That he made no such Promise in six Years, with a Replication thereto. 81

Payment pleaded to an Action upon several Promises. 83

A proper Replication thereto. *ib*

The Manner of Pleading when there is more Promises than one, and the Defendant pleads the General Issue to Part, and specially as to the Residue. 84

A proper Replication thereto. 85

The like Plea where there are five Promises, and the Defendant pleads to the 2d, 3d, 4th and 5th, and to 10l. Part of the 20l. in the first Promise, the General Issue, and a Tender to the Rest. 86

Replication thereto. 87

Payment pleaded after the Day in the Condition to an Action of Debt upon a Bond, according to the Form of the Statute of the 4th and 5th of Queen Anne, *cap.* 16. 88, 89

Capias.

The Form of a *Capias* in Debt. 13

The like in Trespass. *ibid.*

The like in Case. *ibid.*

The

The TABLE.

The like Form, with an <i>Accetiam.</i>	<i>ibid.</i>	The like in Covenant.	<i>ibid.</i>
The like with several <i>Accetiams.</i>	<i>ibid.</i>	In Trespass and Assault.	<i>ibid.</i>
The like with several <i>Accetiams</i> of different Natures.	<i>ibid.</i>	Upon a Nonsuit in Case.	<i>ib.</i>
In Assault and Battery.	14	In Ejectment.	121
The Form of a Special <i>Capias.</i>	<i>ibid.</i>	In Debt.	<i>ibid.</i>
Instructions for a Special <i>Capias</i> in Debt.	8, 10.	Against an Executor <i>de bonis propriis</i> , after a <i>Devastavit</i> return'd.	122
The usual Instructions for a <i>Capias.</i>	<i>ibid.</i>	A <i>Testatum Ca. Sa.</i>	123
Where there are several <i>Arctiams.</i>	12	A <i>Non Omittas Ca. Sa.</i>	<i>ib.</i>
Case.		A <i>Ca. Sa.</i> for an Executor in Debt, upon a Judgment by Default after a <i>Scire Facias.</i>	124
A Declaration upon a Promissory Note against the Drawer, payable one Month after Date.	37	For the Residue of Debt and Damages, Part having been levied by a <i>Fieri Facias.</i>	125
Another against the Defendant as Drawer upon a Note, payable on Demand.	38	The Form of a <i>Certiorari</i> to the Mayor, Aldermen, and Sheriffs of London.	168
Another against the Defendant as Indorser.	39	The like to remove an Attachment.	<i>ib.</i>
Another against the Defendant as a second Indorser.	40	Certiorari vid. Attornies-Committment.	
Upon an Inland Bill of Exchange against the Drawer.	43	The Form of a Commitment to the Fleet after Judgment.	188
A Declaration for scandalous Words of a Tradesman.	46	Another in Discharge of Bail.	189
A Declaration for Money lent.	17	Debt.	
Ca. Sa.		A Declaration in Debt upon a Bond.	51
A <i>Capias ad Satisfaciendum</i> in <i>Assumpsit.</i>	119	The like brought by a surviving Obligee.	53
The like in Case.	120	A Declaration upon a Bond brought by the Husband and Wife, as Executrix of the last Will and Testament of the	

The TABLE.

the Obligee, and the other
Co-executrix against the
Heir of the Obligor. 54
A Declaration in Debt upon an
Assignment of a Bail-Bond
against the Principal. 59
A Declaration in an Action of
Debt for Rent, upon a Lease
Parol, laid two several Ways. 56
A Declaration upon a Recog-
nizance upon a *Habeas Cor-
pus*, after Judgment in the
Common Pleas, affirmed in
the King's Bench by Writ
of Error. 59
Debitum potest.
Of a *Debitum potest.* to ad-
mit a Guardian for an In-
fant. 192
Ejectment.
The common Rule. 178
For a Declaration and other
Proceedings in Ejectment,
vide the Proceedings in the
King's Bench.
English Proceedings.
Recital of an Act of the 5th
of King George the Second,
where the Cause of Action
does not amount to ten
Pounds, that the Proceed-
ings shall be in *English*, and
written in Words at Length,
and in a common legible
Hand. 32
The Penalty that is to be in-
flicted, and how to be reco-

vered where any Person is
aggrieved contrary to the
Act of the 5th of King
George the Second, which
orders the Proceedings to be
in *English*, in all Causes
under ten Pounds. 33

Error.

What cannot be assign'd for
Error. 93

Of Executions.

The Foundation of Writs of
Fieri Facias. 159

The like of a *Ca. Sa.* *ibid.*

The like of an *Elegit.* *ibid.*

There's not to be two Writs of
Execution at one Time. *ib.*

When to have a *Fi. Fa.* or *Ca.*
Sa. for the Residue. 160

When the Plaintiff may have
a new Execution after a *Ca.*
Sa. returned. *ibid.*

Where the Goods need not be
appraised. 162

What Property the Sheriff has
in the Goods. *ib.*

What to be done where the
Goods are released. 162, 163

Where a *Venditioni Exponas*
cannot be awarded. *ib.*

When and how a *Testatum Fi-
eri Facias* must be sued out.
ibid.

What is the Consequence
where the Plaintiff releases
Part. *ibid.*

How the Sheriff must levy the
Goods of one Partner. *ib.*

Whether

The TABLE.

Whether the Sheriff may sell, and how <i>ibid.</i>	Where a Judgment is had a- gainst Two, how the <i>Sri.</i>
How long a <i>Fi. Fa.</i> can be con- tinued. <i>ibid.</i>	<i>Fa.</i> must be brought. 165
Where an <i>Andite Querela</i> shall be no <i>Superfedeas</i> . <i>ibid.</i>	When a Prisoner is to be char- ged in Execution. <i>ibid.</i>
How the Sheriff is to behave where two <i>Elegits</i> come to him. <i>ibid.</i>	Where an Execution may be issued out without a <i>Sri. Fa.</i>
What to be done where the Defendant dies in Execu- tion. <i>ibid.</i>	166
Where a Man may have a <i>Ca.</i> <i>Sc.</i> after an <i>Elegit</i> . <i>ibid.</i>	Where the taking of one De- fendant is no Discharge of the other. <i>ibid.</i>
That a <i>Fi. Fa.</i> may be execu- ted after the Defendant's Death. <i>ibid.</i>	Where the Sheriff may or not break open a House to exe- cute his Execution. 162
Where a Writ of Error shall be said to be a <i>Superfedeas</i> , and where not. 161	By what Statute the Party's dying in Execution gives Leave for the Plaintiff to have another Execution. <i>ib.</i>
Where Part is levied what's to be done before the Plaintiff can make out a new Execu- tion. <i>ibid.</i>	By what Statute the Creditor is empower'd to retake a Pri- soner escaped from an Exe- cution. <i>ibid.</i>
Where an Execution deter- mines not by the Defen- dant's Death. <i>ibid.</i>	At what Time the Goods shall be said to be bound by the Execution, and when. <i>ibid.</i>
What is a good Return by the Sheriff to a <i>Fi. Fa.</i> <i>ibid.</i>	Writs of Fieri Facias.
What is to be done to have the Execution perfected. <i>ibid.</i>	A <i>Fieri Facias</i> upon promises unperformed. 126
How the Sheriff is to behave in the manner of his Execu- tion. 162	For Words. <i>ibid.</i>
How the Sheriff is to behave where two Executions come to him at one and the same Time. 164	In Covenant. 127
	In Debt. <i>ibid.</i>
	In Ejectment. <i>ibid.</i>
	In Replevin. <i>ibid.</i>
	In Trespals. <i>ibid.</i>
	A <i>Testatum Fi. Fa.</i> in Debt. 128
	Non Omittas <i>Fieri Facias</i> . <i>ibid.</i>
	A <i>Te.</i>

The T A B L E.

A *Testatum Fi. Fa.* against an Executor, after a former *Testatum* had issued, and *nulla bona* return'd after a *Devastavit*. 129
The like against an Administrator without a *Devastavit*. 132

Fines.

The Heads under which they are distributed. 203

The Nature and Definition of a *Fine*. *ibid.*

Upon what Action it is levied. 204

Its Antiquity. *ibid.*

That it has been esteem'd a *Feoffment* of Record, and why. *ibid.*

That Fines were leviable before the Statute *Modus levandi Fines*. 205

That the Statute doth not extend to Antient Demeſne Courts where they are reverſable by a Writ of *Disceit*. *ibid.*

Of the ſeveral Sorts of Fines. *ibid.*

Of a *Fine ſur Conuſance de droit come ceo que il ad de ſon done*. 206

Of a *Fine ſur Conuſance de droit tantum*. 207

Of a *Fine ſur done grant and reuder*. 208

The difference of a *Fine ſur done grant and reuder*, and a

Fine ſur Conuſance de droit come ceo, &c. 209

Who may take by way of *Reuerſion*. 210

Of a Remainder. 211

Of a Rent Reſerved. *ib.*

Condition of Re-entry. *ib.*

Reſervation of Rent. 212

Clause of Diſtreſs, or *Nemine pene*. *ibid.*

Of a Jointure. *ibid.*

Of a Leaſe for Years, made by *Fine*. 213

Of Barring the Iſſue in Tail. 213

Of a Diſcontinuance. 214

Of a *Fine ſur Conceſſit*. *ib.*

Of the ſeveral Parts of a *Fine*. 215

Of the Original Writ. *ibid.*

Of the Composition of the King's License to alienate. 216

The ſeveral Rates of compounding Fines. 217

The Nature of the *Fine* paid, *pro ſcientia Concordandi*. 217

Of the Party's dying before the *Fine* completed. 218

Of the Concord. 219

Of the Preſcription of Entire Things. *ibid.*

Of the Parcels. 234

By what Names they are to paſs, and how to be plac'd. 236, 237, 238, 239, 240, 241, 242, 243.

How

The TABLE.

How the Warranty must be.	221, 222, 223.	Where several Towns are of the same Name.	240
Of the Note of the Fine.	225	Manors extending into several Towns.	<i>ibid.</i>
Of the Foot of the Fine.	<i>ibid.</i>	Where several Manors are of the same Name.	<i>ibid.</i>
Of Lands lying in several Counties.	<i>ibid.</i>	Of a Fine of a Presentation.	<i>ib.</i>
Of the Proclamations.	226	Of Vicarages Endow'd and not Endow'd.	<i>ibid.</i>
By what Statute they were appointed.	227	Of Parsonages and Rectories.	241
How to be made.	<i>ibid.</i>	Of Wood.	243
Who may be Cognizors and Cognizees.	228, 229, 230, 231, 232.	Of House-Boot and Hay-Boot.	<i>ibid.</i>
By what Names the Cognizors and Cognizees may give and take in a Fine.	232, 233, 234.	Of a Fishery.	<i>ibid.</i>
Things more worthy to be plac'd before Things less worthy.	236	Of a Foldage.	<i>ibid.</i>
Entire Things to be plac'd before Parts.	237	Of a Chapel.	<i>ibid.</i>
Parts of Things excepted, before Things out of which they are excepted.	237	Of a Messuage, Dwelling-House, or Curtilage, &c.	<i>ib.</i>
Things excepted to be certainly named.	<i>ibid.</i>	Of a Cottage, Toft, or Chamber.	242
The Exception to be of Things that lie in the Register.	<i>ibid.</i>	Of Parts of Entire Things.	<i>ib.</i>
A Writ of many Things, how to be express'd.	288	Of a Messuage divided.	<i>ibid.</i>
Of Apt Words to be used.	239	Of a Mill.	<i>ibid.</i>
How a Manor may pass.	<i>ibid.</i>	Land, how to be demanded.	<i>ib.</i>
A Castle, Honour, or Hundred.	<i>ibid.</i>	Turbary, what it is.	243
The Parish, Town and County to be named.	<i>ibid.</i>	That more Acres may be inserted than are intended to pass.	<i>ibid.</i>
		Of the Manor in passing of Fines.	244
		Before the Lord Chief Justice.	<i>ibid.</i>
		Before the other Judges and Serjeants at Law.	<i>ib.</i>
		Before Commissioners.	245
		The Tenure of the Dedimus.	
		By whom to be Executed.	246

How

The TABLE.

How to Acknowledge a Fine at the Bar. 247
 Of the Acknowledgment of a Fine before the Lord Chief Justice. 248
 A President of a Fine with the Description of the *Ec.* 249
 The Form of the Caption. 250
 The Form of the Writ of Covenant. *ibid.*
 The Manner of passing it thro' the Alienation Office. 251
 252
 The Form of the Warrant of Attorney, and the Manner of passing it thro' that Office. 252, 253
 The like thro' the *Custos Bre-vium* Office. *ibid.*
 The like thro' the King's Silver Office. 254
 The Use of that Office. *ibid.*
 The like thro' the Chirographer Office. *ib.*
 The Manner of acknowledging a Fine before Commissioners. *ibid.*
 The Form of the Caption. 255
 The Form of the Judges *Allotatur.* 256
 Of the Return of the Commissioners. *ibid.*
 The Form of a Fine *sur Conu-zance de droit come ceo, que il ad de son done, &c.* 257
 The Form of a Fine *sur done Grant and Rander*, other-

wise called a *Double Fine.* 258.
 The Form of a Fine *sur Conu-zance de droit tantum.* 259
 A Lease for Years, by a Fine *sur Concessit.* 260
 A Fine from a Man and his Wife, to One, of a Manor, Land, Meadow and Pasture, upon a Grant for 99 Years, without Impeachment of Waste, rendering a *Pepper-Corn* with Warranty against the Heirs of the Husband. 262
 A Fine *sur Concessit* from two Cognizors to one Cognizee, of divers Manors, Tenements, and of a Common of Pasture, and a Rectory, to hold to the Cognizee for 60 Years, if the Cognizors, or either of them, so long live, without Impeachment of Waste, rendering the Rent of a *Pepper Corn*, if demanded. 263

Habeas Corpus.

That no *Habeas Corpus* is to be brought where the Sum does not exceed five Pounds. 32
 A *Habeas Corpus* to the Sheriffs of London. 194
 The same after a *Capi.* returned. 195
 The like to the Judges of the Palace-Court. 195

Ha.

The TABLE.

Habeas Corpora.

The Form of a *Habeas Corpora* for the Assizes. 94

The like in *London*. *ibid.*

An Explnation of the Writs of *Habeas Corpora*, and *Disstringas*, and of the Entry of the awarding these Writs. 96, 97, 98, &c.

The Form of a *Habeas Corpora* as it is now pass'd at the Office. *Vide the Preface.*

Habere facias Possessionem.

Vide the Proceedings in the King's Bench.

Imparlances.

The Rule that upon a *Clau-sum fregit* Writ the Defendant shall not be entitled to an Imparlance. 34

The Manner of entring a Special Imparlance. 68

Where the Want of an Imparlance has been said to be Error. 69

Infants.

Of Proceedings by and against Infants. 18

The Form of an Admission of a next Friend. 191

The like of a Guardian. *ibid.*

The Manner of declaring. *ib.*

Of a Plea by a Guardian. 195

Inquiries.

The Form of a Writ of Inquiry. 114

A Writ of Inquiry where the Plaintiff died after Judgment, and before the Writ of Inquiry. 116

Jurata.

The Form of a *Jurata*. 90

With proper Notice how it ought to be when you would enter it at full Length. *ibid.*

The Form of a *Jurata* in *London* and *Middlesex*. 82

How the *Jurata* was awarded before the Act of the 5th of his present Majesty, for regulating Juries, and how it ought to be now. 92

The Form of a *Jurata* as it is now pass'd at the Office. *Vide the Preface.*

Jury.

When the Jury are said to be Defaulters. 100

General Issues.

That the Defendant made no such Promise. 79

A Plea that he made no such Promise with the Award of a *Verdict* at length. *ib.*

Then the Bond is not the Defendant's Deed. 80

That the Bill Penal is not his Deed. 81

That an Indenture upon which the Plaintiff Declares for Right is not his Deed. *ib.*

That the Defendant owes the Plaintiff nothing. *ib.*

Not Guilty. 86

Judg-

The TABLE.

Judgments.

By Default in Case for Wrongs. 109

In *Assumpsit*. *ibid.*

In Trespass. 110

In Trespass, Assault and false Imprisonment. 120

In Covenant. *ib.*

By *Nisi dicit* in Debt. *ibid.*

By *Cognovis Actionem*. 111

Upon a Bond. *ib.*

By *non sum Informatus* in Case. *ib.*

In Debt. 112

Where the Defendant relinquishes his Plea of *Solvit ad*

idem, and confesses the Action. *ibid.*

Upon a Demurrer to a *Scire*

Facias upon a Recognizance. 112

The Description of a Judgment. 144

Of an Interlocutory Judgment. *ibid.*

Of a final Judgment. *ib.*

The Reason and Foundation of Judgments by Default, in the King's Bench. *ib.*

How the Damages may be increased. 143

But not to be mitigated. *ib.*

What to be done where excessive Damages are found. *ib.*

What to be done where the Jury find more Damages than said in the Declaration. 143

Where the Court increased the

Damages, where it was de-

to fired. 144

Of the Conclusion of a Judgment with the Word *Miseri-*

cordia. 145

The Foundation of the Use of that Word in Judgments. *ib.*

The Difference between that

and a *Capiatur*, and the Reason thereof. 146, 147

Where a Judgment used to be,

quod defendans capiatur. *ib.*

Where the Misentry of the

one for the other was Error. *ibid.*

By what Statute the *Capiatur*

was taken away. *ibid.*

What was *Cassus omittis* out of

the Act. 148

By what Statute the Misentry

of the one for the other is ai-

ded. 148

To what Time a Judgment

shall be said to have Rela-

tion. *ibid.*

How far the Statute of Frauds

and Perjuries affects the Day

of signing a Judgment. *ib.*

That a Judgment may be en-

tered up after the Defon-

dant's Death. 149

What is a Revocation of a

Warrant of Attainder, given

by a Feme, Coverture. *ib.*

Mention made of the Act

which directed the docquet-

ting of Judgments. *ib.*

The

The TABLE

The Penalty for the Omission.	have Judgment.	153
When to move in Arrest of Judgment, and when not.	The Manner of moving in Arrest of Judgment.	152
When Judgment must be signed.	Where Judgment shall be arrested, and where not.	155, 156
When Judgments by Default are not to be impeached.	Where there is a joint Judgment, and one dies, how the <i>Sci' Fa'</i> must be brought.	152
When the Court will take Notice of the Terms upon which a Judgment is given.	Where a Judgment is once executed, how the Goods are said to be in the Custody of the Law.	<i>ib.</i>
When the Court will set aside a Judgment by Default, tho' regular.	For what Reasons Judgments have been reversed.	<i>ib.</i>
When the Court will not refer a Judgment for Irregularity to the Master.	Where a Judgment may be reversed as to Part, and to stand good as to the rest; and when not.	<i>ib.</i>
If a Judgment be reversed in the Exchequer Chamber, who shall give the new Judgment.	When Judgment ought to be given <i>de bonis Testatoris</i> .	156
The like where Judgment is reversed by the House of Lords.	Where Damages are given as incident.	<i>ib.</i>
Where the Plaintiff or Defendant dies after an Interlocutory Judgment, how the <i>Sci' Fa'</i> must be.	What is Error in a Judgment.	157
Where the Administrator cannot plead to such <i>Sci' Fa'</i> .	Where the Plaintiff may relinquish his Action as to Part, and how to be entered.	158
Where Debt lies not in an inferior Court, on a Judgment in a superiour Court.	How a <i>Retraxit</i> operates.	157
Where the Plaintiff cannot	When erroneous Judgment may be pleaded.	<i>ib.</i>
	When a Judgment must be revived by <i>Sci' Fa'</i> , and when it need not.	158
	When the Leave of the Court is necessary to the Entry up of a Judgment.	153
	What	

The TABLE.

What Power the Plaintiff shall not be said to have by a Rule for Judgment. 153

The Manner of entering a Judgment for the Defendant after a Verdict, and how upon a *Non pros.* 154

The Difference between entering of Judgments in Debt, in the Common Pleas and in the King's Bench. 193

The Time and Manner of signing a Judgment in the Common Pleas. 158

The like in the King's Bench. *ib.*

Misericordia.

It's Derivation, Foundation, and the Reason and Use of that Word in Judgments. 148

Notice.

The Notice that is to be given with the Service of Process. 33

Nisi prius.

When first instituted. 98

By what Act of Parliament. *ib.*

The Explanation of the Word *Nisi prius* in the Award of a *Habeas Corpora*, and *Disstringas.* 100, 101, 102, 103

Non pros.

The Entry of a *Non-pros* after an Appearance, for want of a Declaration. 165

Non omittas.

The Form of a *Non omittas capias.* 18

The Manner of suing it out formerly, and how the usual Practice is now therein. *ib.*

Ostave.

What is meant by the *Ostave* of St. Hillary. 5

Original.

The Form of a Special Original. 14

That an Original gives the Court a Jurisdiction, and how they used to be sued out. 6, 7

Oyer.

Why Oyer is granted in Pleadings. 69

Where it is denied, and how far it may be said the Party has a Right to it. *ib.*

Placita.

The *Placita* of a Record in the Common Pleas. 89

The Reason of a new *Placita* in the King's Bench. 101

Pleading.

The Form and Manner of pleading. 66

The ancient Manner of Pleading. 63, 64

The Reason and Foundation of the Manner of the Defendant's Plea, by coming and defending the Force and Injury, &c. 66

Possea.

The Form of a *Possea.* 104

The Explanation of the Words therein, that the Jury shall be excepted of against the

The TABLE.

Defendant thro' his Default.	105, 106.	Of the Common or Nominal Vouchee.	297
Privilege. Vid. Atroities.		What Persons and by what Names Demandants, Tenants, and Vouchee are to be.	<i>ibid.</i>
Procedendo's.		Of what Things a Writ of Entry will lie, and what not.	298
A <i>Procedendo</i> to the Judges of the Marshal's Court, where the <i>Habeas Corpus</i> was returnable immediately.	195	The manner in which the Parcels are to be plac'd.	301
Another where the <i>Habeas Corpus</i> was returnable in Court.	177	The Form of the several <i>Præcipes</i> .	305
Respondens ouster.		Of the <i>Dedimus</i> to take the Warrants of Attorney.	307
What proper to be entered on the Roll where there is a <i>Respondens ouster</i> .	72	Instructions for the same.	<i>ib.</i>
The Form of the Entry.	<i>ib.</i>	The Form of the Warrant of Attorney, and the Caption.	308
Records.		The Return of the <i>Dedimus</i> .	309
The Manner of making up Records.	89	Of Passing the <i>Præcipe</i> at Bar with the Fees.	<i>ib.</i>
Of Recoveries.		The Form of a Writ of Entry with the Fee.	310
What a Recovery is, and to what Intent is suffered.	291	The Form of a Writ of Seisin.	312
Of the Parties thereto.	292	The Return of the Writ of Seisin.	313
Of the Demandant.	292, 293.	The Form of a Writ of Summons for the first Vouchee.	314
Of the Tenant to the <i>Præcipe</i> .	<i>ib.</i>	The like for the second Vouchee.	315
How to be made.	<i>ib.</i> 295.	Of the Teste and Return of those Writs.	<i>ib.</i>
Of a Writ of Entry against Tenant in Tail.	293		
Where Tenant for Life, and he in Remainder, are Tenants to the <i>Præcipe</i> .	294		
What will not destroy the Tenant of the Lessee for Years.	<i>ib.</i>		
Of the Vouchee.	296		
The Nature of his Office.	<i>ib.</i>		

A De-

The TABLE

A Definition of the several Writs of Entry in the *Per Cui* and *Pos.* 316, 317
 The Form of a Writ of Entry with a single Voucher. 317, 318, 319.
 Another with several Alterations, and Reasons for the same. 321, 322, 323, 324, 325, 326, 327, 328, 329
 A Description of the several *&c.* in the Recovery. 330, 331, 332, 333
 The Form of a *Præcipe* and of the Warrant of Attorney. 333
 The Antient Method of entering the same on the Remembrance, and passing at the Bar. 334
 The Entry of the Summons. 335
 The Present Method of passing Recoveries at the Bar. 336
 The Form of the Entry of the *Mittimus* and *Transcript*. 338
 A Recovery with Double Voucher with Warrants of Attorney. 338, 339, 340
 How to Draw it, *&c.* when it is by a treble or quadruple Voucher. 344
 The Form of the Exemplification. 347
 Of the Method of examining Recoveries, and the Eces. 347

Relics Verification.
 Where it may be, and how to be entered, *Vide* Judgments. —

Retraxit.
 When a *Retraxit* may be entered, and how it operates. 137

Returns.
 The proper Returns of the several Terms. 5, 6, 7.
 Recital of the Act of Parliament, that makes it unnecessary that there should be fifteen Days between the Teste and Return of Writs of Execution, *Venire, Habeas Corpora, Distringas, &c.* 96

Rules.
 A Rule of the 1st of K. George 2d concerning Notice of Writs of Enquiry. 34
 The Rule of the 1st of K. George, made to establish the Practice, pursuant to the Act to prevent frivolous and vexatious Suits. 35
 A Rule of the 3d of K. George 2d, that the Defendant is to have eight Days Time to plead, in Causes where the Defendant lives 20 Miles from *London*; and four, where he lives within 10 Miles from *London*. 34
 A Rule of the 3d of K. George 2d relating to Common Procefs

The TABLE

<p>cess, that there shall be no Impar lance. 10</p> <p>Scire Facias.</p> <p>That a <i>Scire facias</i> lay not at Common Law; by what Statute it was given, and how far the Defendant in a <i>Scire facias</i> may be said to be a Party to the Suit. 67</p> <p>What cannot be pleaded to a <i>Scire facias</i>. 152</p> <p>A <i>Scire facias</i> upon a Judg- ment against an Executor after a Year and a Day. 167</p> <p>A <i>Scire facias</i> against an Ex- ecutor upon a Judgment against the Testator. 169</p> <p>A <i>Scire facias</i> upon a Judg- ment in Ejectment for the Plaintiff against the Defen- dant, who entered into the Lands after the Death of the Defendant in Ejectment. 172</p> <p>A <i>Scire facias</i> against the late Sheriff of <i>Dorset</i>, for not re- turning the Money levied by a <i>Fieri Facias</i>. 172</p> <p>A <i>Scire facias</i> upon a Recogni- zance against Bail in the Common Pleas. 173</p> <p>A <i>Scire facias</i> by Executors against Executors. 175</p> <p>Service.</p> <p>That no Attorney, Bailiff, or other Person shall take or de- mand more than 5 s. for</p>	<p>Service of Process, and 1 s. in an inferiour Court. 32</p> <p>Recital of an Act of the 5th of K. George 2d, that an Affi- davit of the Service of Pro- cess shall be made of the Service of Process, under 10 l. are to be filed <i>gratis</i>. ib.</p> <p>Subpoena.</p> <p>The Form of a <i>Subpoena</i> for the Assizes. The like in <i>London</i>. The like in <i>Mid- dlesex</i>. 102</p> <p>The Form of a Ticket for the Witnesses. 103</p> <p>Superfedeas.</p> <p>A <i>Superfedeas</i> on a <i>Habeas Corpus</i>, for that it issued out without the Knowledge of the Court. — 199</p> <p>A <i>Superfedeas</i> because a <i>Capias ad Satisfaciendum</i> had been erroneously sued out. 200</p> <p>A <i>Superfedeas</i> on an Outlawry. 201</p> <p>A <i>Superfedeas</i> on a <i>Capias</i>, the Defendant having put in Bail. 202</p> <p>Terms.</p> <p>Hil. Term, and the Returns. 5</p> <p>How it began anciently. 2</p> <p>Of Easter Term, how it an- ciently began, and the Manner of the present Returns. 3</p> <p>Trinity Term and the Re- turns. 7</p>
--	--

A De-

The TABLE.

A Description of it in ancient Times. 3

Michaelmas Term; how many and what are the Returns. 5

When altered. 4

Testatum.

The Manner of suing out a *Testatum*, and of putting in Bail to a *Testatum* Writ. 16

Vide Fi Fa and Ca Sa.

Trial.

When to move for a new Trial. 150

What will be a sufficient Foundation for a new Trial. 143

Venire.

The Form of a *Venire*. 83

The Form of the Award of a *Venire*, with Words at length. 93

How the Writs of *Venire* and *Habeas Corpora* must be tested and returnable. 95

Recital of the Act that makes it unnecessary to have 15 Days between the Teste and the Return of these Writs. 96

Warrants of Attorney.

The Form of Warrants of Attorney. 93



F I N I S.

THE GREAT BRITISH MUSEUM

**BOOKS Printed for R. GOSLING at the
Mitre and Crown against Fetter Lane, in
Fleet-street.**

THE Country Justice; containing the Practice, Duty, and Power of the Justices of the Peace; as well in, as out of Sessions. Wherein all the Statutes and Cases in Law, that in any wise relate to the Jurisdiction and Authority of a Justice of the Peace, are carefully collected and digested under proper Titles. By *Michael Dalton of Lincolns Inn, Esq;* and one of the Masters in Chancery. And, for the better Help of such Justices of the Peace, as have not been much conversant in the Study of the Laws of this Realm, there is added an Appendix; being a compleat Summary of all the Acts of Parliament, shewing the various Penalties of Offences by Statute; and the particular Power of One, Two, Three, or more Justices in their Proceedings and Determinations, under several distinct Heads in alphabetical Order. To the Whole are annexed large Tables of the Principal Matters therein contained. By *William Nelson of the Middle-Temple, Esq;*.

Reports of Cases adjudged in the Court of King's Bench, together with several special Cases adjudged in the Courts of Chancery, Common Pleas, and Exchequer; from the Revolution to the tenth Year of *Q. Anne*. By *William Salkeld* late, Serjeant at Law; with Two Tables; the one of the Names of the Cases, the other of the Principal Matters therein contained. The Third Volume. Price 17s.

Reports of Cases decreed in the High Court of Chancery, during the Time of *Sir Henry Finch*, afterwards Earl of *Nottingham*, was Lord Chancellor, in many of which Decrees he was assisted by some of the Judges of the Common Law: All which Cases are truly stated on the Pleadings, and the Arguments on each Side clearly reported; together with the Opinions of those Judges who sat as Assistants to the Chancellor before he pronounced his Decrees. Price 18s.

Sir Ortl. Bridgman's Conveyances: Being select Precedents of Deeds and Instruments concerning the most considerable Estates in



BOOKS Printed, &c.

in England: Drawn and approved by that honourable Person in the Time of his Practice; in 2 Parts. The 5th Edition, with large Additions: And a new Table to the Whole. Price 1 *l.* 10 *s.* N. B. The 2d Part may be had alone. Price 1 *l.*

An Abridgment of the Common Law: Being a Collection of the Principal Cases, argued and adjudged in the several Courts of *Westminster-Hall*. The Whole being digested in a clear and alphabetical Method, under proper Heads, with several Divisions and Numbers under each Title, for the more ready finding any Judgment or Resolution of the Law Cases; whereby the Opinion and Judgment of the Courts may be seen in an exact Series of Time, and what Alterations have been made in the Law by subsequent Statutes and Judgments, brought down to the Year 1725. By *William Nelson* of the *Middle Temple*, Esq; In 3 Vols. Fol. Price 4 *l.* 10 *s.*

The Clergyman's Law: Or, the Complete Incumbent: Collected from the 39 Articles, Canons, Decrees in Chancery, and Exchequer; as also from all the Acts of Parliament, and Common Law Cases relating to the Church and Clergy of *England*, digested under proper Heads, for the Benefit of Patrons of Churches, and the Parochial Clergy, and will be Useful to all Students and Practitioners of the Law. By *William Watson* L. L. D. late Dean of *Battel*. The third Edition, with large Additions. Price 1 *l.* 1 *s.*

Leges Anglo Saxonicae Ecclesiasticae & Civiles; containing all the *English, Saxon, French, Norman* and *Latin* Laws, from the first Christian K. *Ethelbert*, down to *Magna Charta*; with large Notes, containing necessary Explications and References to the old and present Laws in *Great Britain*, the Capitularies and old Laws of *Germany* and *France, Sweden* and *Denmark*. To which is added, *Sir Hen. Spelman's Codex Legum Veterum*; containing all the Laws from K. *Henry I.* to *Magna Charta*, and also *Bishop Nicholson's* Epistolary Dissertation, *De jure feudali veterum Saxonum*. By *Dr. Wilkins*, in Fol. Price 1 *l.* 6 *s.*

An exact Abridgment of all the Statutes in Force and Use, beginning with *Magna Charta*, in the 9th Year of *Henry III.* and now brought down to the 11th Year of King *George the First's* Reign, alphabetically digested under their proper Titles. In

BOOKS Printed, &c.

In 8 Volumes. Price 2*l*. N. B. The Two last Volumes containing an Abridgment of the Statutes in King George the First and Second's Reign may be had alone.

Les Terms de la Ley: Or, certain difficult and obscure Words and Terms of the Common Law and Statutes of this Realm now in Use, expounded and explained. Corrected and enlarged, with the Addition of many other Words, particularly of those that have been lately introduced into the Statute Law of Great Britain. Price 6*s*.

A Treatise of Trover and Conversion: Or, The Law of Actions on the Case for Torts and Wrongs; wherein all the Cases concerning such Actions are digested under their proper Heads, viz. 1st, For Trover and Conversion of Goods, 2dly, For malicious Prosecutions, 3dly, For Nuisances, 4thly, For Disceits on Warranties, 5thly, On the common Custom against Carriers, Inn-keepers, &c. To which are added several select Precedents of Declarations and Pleas in such Actions, and References to all that are extant in the Books of Entries. The second Edition, with large Additions. Price 5*s*.

Doctor and Student: Or, Dialogues between a Doctor of Divinity and a Student in the Laws of England; containing the Grounds of those Laws, together with Questions and Cases concerning the Equity and Conscience thereof; also comparing the Civil, Canon, Common and Statute Laws, shewing wherein they vary from one another; to which is now added, an Account of the Author, and a general Table of the Principal Matters, never before printed. Price 3*s*. 6*d*.

A Collection of the several Statutes, and Parts of Statutes, now in Force, relating to High Treason and Misprision of High Treason; together with a Form and Method of Trial of Commoners, in Cases of High Treason and Misprision of High Treason, pursuant to the Statute made in the 7th Year of the Reign of the late K. William III. of England, &c. intituled, *An Act for regulating Trials in Cases of Treason and Misprision of Treason*; and also in Cases of other Treasons and Misprision of Treason, not restrained to the Method directed in that Statute; but remain triable, and to be proceeded upon according to the Course of the Common Law. Published by Order of the House of Lords, with the Approbation of all the Judges. Price 2*s*. 6*d*.